



ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

By email and in-person delivery

May 11, 2016

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DOCR (S-30)
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Re: Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d

Dear Ms. Proll, Ms. Goodwill, Ms. Neal, and Ms. Golightly-Howell:

The Brandywine | TB, Southern Region Neighborhood Coalition (“Brandywine TB Coalition”) and Patuxent Riverkeeper (collectively, “Complainants”) submit this complaint against the Maryland Public Service Commission (“PSC”), the Maryland Department of the Environment (“MDE”), and the Maryland Department of Natural Resources (“MDNR”) for issuing a Certificate of Public Convenience and Necessity (“CPCN”) to Mattawoman Energy, LLC on November 13, 2015, for the construction of a nominally-rated 990 megawatt natural gas-fired power plant in Brandywine, Maryland. Authorizing construction of the Mattawoman gas plant in this predominantly black community already overburdened by local pollution sources will have an unjustified disproportionate adverse impact on the basis of race in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and the implementing regulations of the United States Department of Transportation (“DOT”), 49 C.F.R. Part 21, and the United States Environmental Protection Agency’s (“EPA”), 40 C.F.R. Part 7.

Title VI prohibits entities receiving federal financial assistance from engaging in activities that subject individuals to discrimination on the basis of race, color, or national origin. 42 U.S.C. § 2000d. As entities receiving financial assistance from DOT or EPA, the PSC, MDE, and MDNR are subject to Title VI’s prohibition against discrimination. The issuance of the

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CPCN violates that prohibition by disproportionately subjecting the black residents of Brandywine to air pollution and other negative impacts based on their race.

Complainants request that the DOT Departmental Office of Civil Rights and the EPA Office of Civil Rights accept this complaint and investigate whether the PSC, MDE, and MDNR violated Title VI of the Civil Rights Act and its implementing regulations.¹ For reasons of economy, we request that these investigations be consolidated, and that EPA and DOT collaborate and coordinate on remedial approaches. Because the coordinating entity at the state level—the PSC—is funded by DOT, we request that DOT take the lead role at the federal level. We also request that the Civil Rights Division of the Department of Justice play an active role in coordinating these federal investigative and enforcement actions, consistent with the mission of the Federal Coordination & Compliance Section.

Complainants request that the state agencies be brought into compliance by requiring them to withdraw issuance of the CPCN and withhold issuance of a new CPCN unless and until they: a) conduct a full and fair analysis of disparate impacts from the proposed facility (including air quality monitoring and modeling, a health assessment, a cooperative community needs assessment, and a comprehensive traffic assessment in Brandywine); b) conduct a full and fair consideration of alternatives that would avoid such disparate impacts; and c) require that any decision to issue a new or revised CPCN is conditioned on Mattawoman taking steps to ameliorate the negative impacts of the Mattawoman project upon Brandywine’s predominantly black community, including regularly conducting and reporting on air quality monitoring for all pollutants of concern and taking measures to ameliorate traffic congestion.² If the PSC, MDE, and MDNR do not come into compliance voluntarily, Complainants request that DOT and EPA suspend or terminate the federal financial assistance that those agencies receive.³

I. PARTIES

A. Complainants

¹ If either DOT or EPA rejects this complaint, Complainants request that the other agency conduct an investigation alone or jointly with other federal agencies, as appropriate. *See* 28 C.F.R. § 42.408(b) (“Where a federal agency lacks jurisdiction over a complaint, the agency shall, wherever possible, refer the complaint to another federal agency . . .”).

² At a minimum, the PSC, MDE, and MDNR should condition the extant CPCN on satisfaction of these requirements.

³ *See, e.g.*, Letter from Peter M. Rogoff, Adm’r, Fed. Transit Admin., to Steve Heminger, Exec. Dir., Metro. Transp. Comm’n, & Dorothy Dugger, Gen. Manager, S.F. Bay Area Rapid Transit Dist. (Jan. 15, 2010), available at http://www.bart.gov/sites/default/files/docs/BART_MTC_Letter_On_OAC.pdf (notifying state agencies that they were “in danger of losing federal funding” from the Federal Transit Administration because of Title VI noncompliance).

Brandywine TB Coalition is a community-based membership organization dedicated to encouraging smart and sustainable development in Brandywine and southern Prince George's County, Maryland. Its goals include protecting the environment, improving public health, creating jobs, expanding economic opportunity, and improving overall quality of life. In addition to its organizational work to ensure that Brandywine receives its fair share of the benefits of development without shouldering an unfair share of its costs, Brandywine TB Coalition has many members in Brandywine and its immediate environs who will be adversely affected by the approved power plant. The board and membership of the Brandywine TB Coalition reflect the racial demographics of the local community.

Patuxent Riverkeeper is a nonprofit organization dedicated to the restoration and preservation of the Patuxent River and its watershed. Its mission goes beyond water quality to encompass the environmental health of local communities, particularly those suffering from acute environmental injustice such as Brandywine. Patuxent Riverkeeper has been a robust advocate in opposition to environmentally unsustainable development. It has joined in lawsuits challenging air and water pollution from the nearby Chalk Point generating station, and opposed pollution trading schemes that would cause certain communities to bear a disproportionate pollution burden. Several members of Patuxent Riverkeeper live in Brandywine and will be adversely affected by the Mattawoman gas plant.

B. Recipients

The PSC is an "independent unit in the Executive Branch" of the State of Maryland. MD Code, Public Utilities, § 2-101. Under Maryland law, the PSC is responsible for the issuance of CPCNs, which are prerequisite to the construction of power generating stations in Maryland. MD Code, Public Utilities, §§ 7-207, 208. Other state, federal, and private entities participate in the CPCN process, and the PSC plays a coordinating role. The PSC is required to consider "the public safety, the economy of [Maryland], the conservation of natural resources, and the preservation of environmental quality" as it carries out its duty to supervise and regulate utilities. MD Code, Public Utilities, § 2-113. As described below, the PSC is a recipient of federal funds.

MDE is an agency of the State of Maryland, charged with protecting Maryland's environment. MD Code, Environment § 1-401. MDE's responsibilities include the administration of state and federal anti-air pollution laws. MD Code, Environment §§ 1-301(a), 2-103(b). *See also id.* § 2-102. MDE plays a key role in the development of CPCNs for generating facilities: The PSC is required to incorporate into the CPCN requirements of federal and state environmental laws identified by MDE as well as "methods and conditions" for achieving compliance with those requirements, and the PSC is prohibited from adopting any methods or conditions that MDE determines are inconsistent with federal and state environmental laws. MD Code, Public Utilities § 7-208(g). The requirements identified by MDE are incorporated into

the CPCN as licensing conditions, and are binding on the recipient upon issuance of the CPCN. MDE is a recipient of federal funds.

Like MDE, MDNR is an agency of the State of Maryland. MDNR is charged with managing and preserving the state's natural resources. MD Code, Natural Resources § 1-101. MDNR administers Maryland's Power Plant Research Program, which plays an important role in the CPCN application process by conducting studies that include "plant site evaluation and related environmental and land use considerations," and making recommendations to the PSC on the merits of applications and conditions to be incorporated into the final CPCN. *See* MD Code, Natural Resources §§ 3-303, 3-306. MDNR is a recipient of federal funds.

II. JURISDICTION

Title VI's prohibition on discrimination applies to all recipients of federal funds: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. Acceptance of federal funds, including DOT and EPA assistance, creates an obligation on the recipient to comply with Title VI and the federal agencies' implementing regulations.⁴ As explained below, the PSC, MDE, and MDNR are programs or activities receiving federal financial assistance, and are therefore subject to the requirements of Title VI and applicable implementing regulations.

A. Program or Activity

The PSC, MDE, and MDNR are programs or activities within the ambit of Title VI. Title VI defines program or activity as "all of the operations of . . . a department, agency, special purpose district, or other instrumentality of a State or of a local government . . . any part of which is extended Federal financial assistance." 42 U.S.C. § 2000d-4a. Accordingly, if any part of a listed entity receives federal funds, the whole entity is covered by Title VI. *Ass'n of Mex.-Am. Educ. v. California*, 195 F.3d 465, 474-75 (9th Cir. 1999), *rev'd in part on other grounds*, 231 F.3d 572 (9th Cir. 2000) (en banc).

The PSC, MDE, and MDNR are agencies or instrumentalities of the State of Maryland. Accordingly, they meet the definition of program or activity under Title VI and must comply with Title VI in implementing all of their work, regardless of how they spend the funds received from DOT and EPA.

B. Federal Financial Assistance

⁴ Regulations for both EPA and DOT require that applicants for agency funds give "assurance" that they will comply with the agency's Title VI implementing regulations. 40 C.F.R. § 7.80(a)(1) (EPA regulations); 49 C.F.R. § 21.7a(1) (DOT regulations).

The PSC, MDE, and MDNR are recipients of federal financial assistance as defined in DOT and EPA's Title VI implementing regulations.

DOT regulations define "[r]ecipient" as "any State. . . or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State . . . to whom Federal financial assistance is extended, directly or through another recipient. . . ." 49 C.F.R. § 21.23. Similarly, EPA's Title VI regulations define a "[r]ecipient" as "any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient" 40 C.F.R. § 7.25.

The PSC receives federal financial assistance in the form of pipeline safety base grants awarded by DOT's Pipeline and Hazardous Materials Safety Administration ("PHMSA"). According to PHMSA, the PSC received a Natural Gas Pipeline Safety Base Grant in the amount of \$533,783 and a Hazardous Liquid Pipeline Safety Base Grant in the amount of \$39,331 for fiscal year 2016.⁵

MDE and MDNR receive federal financial assistance in the form of grants from EPA. According to USASpending.gov, as of May 2, 2016, MDE has received \$2,368,937 from EPA in fiscal year 2016 so far, including Performance Partnership Grants totaling \$1,985,937.⁶ For the same period, MDNR has received \$1,818,966 from EPA so far.⁷

Because the PSC receives financial assistance from DOT, it is subject to Title VI and DOT regulations. Because MDE and MDNR receive financial assistance from EPA, they are subject to Title VI and EPA regulations.

C. Timeliness

Both DOT and EPA require that Title VI complaints be filed within 180 days of the alleged discriminatory act. 49 C.F.R. § 21.11(b) (DOT Title VI regulations); 40 C.F.R. § 7.120(b)

⁵ PHMSA *Announces over \$54 Million in Pipeline Safety Grants to Support State Pipeline Safety Programs*, PHMSA (Sept. 1, 2015), <http://phmsa.dot.gov/pipeline/phmsa-announces-over-54-million-in-pipeline-safety-grants-to-support-state-pipeline-safety-programs>. In addition, the PSC is a recipient of federal funds because PHMSA awarded the PSC Pipeline Safety Base Grants in the amount of \$566,311 in fiscal year 2015 and \$456,035 in fiscal year 2014, the most recent fiscal years for which data on these programs is available through USASpending.gov.

⁶ USASpending, <http://www.usaspending.gov> (enter "169640062," then select "Environmental Protection Agency" under "By Agency" and "2016" under "By Fiscal Year").

⁷ USASpending, <http://www.usaspending.gov> (enter "033425385," then select "Environmental Protection Agency" under "By Agency" and "2016" under "By Fiscal Year").

(EPA Title VI regulations).⁸ This complaint is timely because it is based on the CPCN granted to Mattawoman Energy, LLC on November 13, 2015, for the construction of a nominally-rated 990 megawatt natural gas-fired power plant.

D. Other Jurisdictional and Prudential Considerations

This complaint satisfies all other jurisdictional and prudential considerations laid out in Title VI, DOT and EPA's implementing regulations, and EPA's Interim Case Resolution Manual. Specifically, this complaint is in writing and is submitted by groups that are authorized to submit a complaint on behalf of individuals who are directly impacted by violations of Title VI.⁹ DOT and EPA have subject matter jurisdiction over this complaint because it alleges discrimination based on race in violation of Title VI of the Civil Rights Act of 1964.

This complaint also contains unique civil rights allegations that have not been alleged in any court proceeding, including allegations specific to the Mattawoman plant and systemic allegations relating to the criteria, methods, and procedures of the PSC, MDE, and MDNR, and their systemic and disproportionate effects on the basis of race.

A state court challenge to the CPCN, *In Re: In the Matter of Petition of John T. Bradley, et al. for Judicial Review of the Decision of Public Service Commission of Maryland, Civil Action No. 24-C-15-006830*, Circuit Court for Baltimore City, presents no obstacle to accepting and investigating this complaint. The petitioners in that case do not make civil rights allegations, much less "the same civil rights allegations."¹⁰ Instead, the petitioners in state court request that the CPCN be remanded to the PSC on two bases only: First, that the PSC did not articulate the basis of its decision to issue the CPCN sufficiently to enable judicial review; and second, that the PSC erroneously denied the petitioners' intervention in the administrative proceeding concerning

⁸ DOT and EPA have authority to waive or extend the 180-day deadline. 49 C.F.R. § 21.11(b); 40 C.F.R. § 7.120(b).

⁹ EPA, Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigations Guidance), 65 Fed. Reg. 39,667, 39,672 (June 27, 2000) (listing jurisdictional criteria applicable to Title VI complaints).

¹⁰ EPA's *Interim Case Resolution Manual* ("CRM") suggests that EPA's Office of Civil Rights ("OCR") might decline to review a Title VI complaint if "[t]he same civil rights allegations have been filed by the complainant against the same recipient with state or federal court individually or through a class action." As the CRM recognizes, this consideration is not a jurisdictional bar to accepting and investigating a complaint, but rather a prudential rule governing the timing of investigations. It does not and could not justify a refusal to exercise jurisdiction over a complaint meeting the jurisdictional requirements of Title VI. In any event, in this matter "the same civil rights allegations" have not been presented to any court. Further, the CRM provides that "[a] complaint may be re-filed with OCR within 30 calendar days following termination of the court proceeding if there has been no decision on the merits or settlement of the complaint civil rights allegations. (Dismissal with prejudice is considered a decision on the merits.)" *Interim CRM* (Dec. 1, 2015) at 12.

the CPCN. *See* Petitioners' Memorandum in Support of Petition for Judicial Review (attached as Exhibit 8). The petitioners do not allege violations of Title VI or any other civil rights law or obligation.

Moreover, this complaint seeks unique relief from DOT and EPA — compliance with Title VI. Complainants ask DOT and EPA to investigate this complaint and take steps to remedy noncompliance with Title VI by the PSC, MDE, and MDNR, including suspending or terminating their federal funding if necessary. This relief is not available through the pending action in Baltimore City Circuit Court. If the petitioners in state court are successful, the PSC may be required to grant intervention to those petitioners or to provide a more detailed justification for its decision to issue the CPCN, but the court decision will not prevent the PSC, MDE, and MDNR from continuing the discriminatory approach reflected in the CPCN of November 13, 2015.

III. BACKGROUND

A. Brandywine

Brandywine is an unincorporated community in Prince George's County, Maryland, located approximately 11 miles southeast of Washington, D.C. According to the U.S. Census Bureau, the Brandywine census-designated place has a land area of approximately 21 square miles and a population of 6,719 that is 72.2% black.¹¹ Brandywine has a long history as a farming community, but in recent years and decades it has been the site of significant development as the population of the Washington, D.C. metropolitan area has grown. Two major roads, MD Route 5 and US Route 301, run through the community, leading to severe traffic congestion and concomitant problems of noise, air pollution, and safety for residents.

Exhibit 1 to this complaint is a map showing the community of Brandywine, the approved location of the Mattawoman gas plant, and the location of the other fossil fuel-fired power plants that are either in operation or under construction in and around Brandywine. According to data from EJScreen, the population within ten miles of the approved location of the Mattawoman gas plant is 67 percent black, and the population within five miles is also 67 percent black.¹²

As Exhibit 1 shows, Brandywine is bordered by several other fossil fuel-fired power plants. Brandywine is already home to an operational 289 megawatt natural gas-fired power plant known as Panda Brandywine.¹³ A 2563 megawatt coal, oil, and natural gas-fired power plant, Chalk Point Generating Station, is located approximately 12 miles southeast of

¹¹ U.S. Census FactFinder, <http://factfinder.census.gov> (search "Brandywine CDP, MD").

¹² EPA, EJSCREEN: Environmental Justice Screening and Mapping Tool, <https://www.epa.gov/ejscreen>.

¹³ Maryland Power Plant Research Program, *Electricity in Maryland Fact Book 2014* at 11 (attached as Ex. 9).

Brandywine.¹⁴ In addition to the Mattawoman plant that is the subject of this complaint, two more fossil fuel-fired power plants are under construction near Brandywine: the 755 megawatt gas-fired PSEG Keys Energy Center less than one mile east,¹⁵ and the 725 megawatt gas-fired CPV St. Charles Energy Center approximately 5 miles south.¹⁶ When all of the approved fossil-fuel fired power plants are constructed, there will be a total of three large gas-fired power plants in the immediate vicinity of Brandywine, all within three miles of one another. There will be a total of five large fossil fuel-fired power plants within 13 miles of Brandywine.

Exhibit 2 is a map showing the proximity of the Mattawoman, Keys, and Panda Brandywine fossil fuel-fired power plants to the public schools in Brandywine. Students at these schools are at risk from air pollution, noise, and traffic associated with the power plants.

Brandywine is the site of numerous open pit sand or gravel mines, a coal ash disposal facility, a facility that processes soil contaminated with petroleum products and heavy metals, and the Brandywine DRMO Superfund site, which was used to store hazardous military and governmental waste.¹⁷ The Superfund site poses a potential risk to groundwater. Given that many Brandywine residents still rely on well water, the heavy industrial activity in residential parts of this community is particularly concerning. For instance, a facility that treats soil contaminated with petroleum products and heavy metals is centrally located within Brandywine. According to the company's website, its treatment process produces air pollutants, such as sulfur and nitrogen oxides, that will also be emitted by the local power plants.¹⁸ A coal ash disposal site and several active sand and gravel mines contribute to air quality so poor that residents in some parts of town cannot open their windows, and a layer of ash and dust regularly gathers on homes and cars.

Brandywine is located in Prince George's County, which is designated as failing to attain national air quality standards for ozone, and until recently was also designated nonattainment

¹⁴ *Id.*

¹⁵ *PSEG Keys Energy Center*, PSEG, https://www.pseg.com/family/power/fossil/stations/keys_energy.jsp.

¹⁶ *About CPV St. Charles*, St. Charles Energy Center, <http://www.cpvstcharles.com/about-sc.php>.

¹⁷ According to EPA, the risk to groundwater from the Brandywine DRMO site is still under investigation. *EPA Superfund Program, BRANDYWINE DRMO, BRANDYWINE, MD*, U.S. EPA, <https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0304462>. See also, Juliet Eilperin, "Environmental justice issues take center stage," *The Washington Post* (Nov. 21, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/21/AR2010112103782.html>.

¹⁸ Oil Operations Permit No. 2010-OPS-14480 (Nov. 30, 2009) (attached as Exhibit 10); Soil Safe, Thermal Desorption, http://www.soilsafe.com/services/thermal_desorption.

for fine particulate matter, or PM 2.5.¹⁹ According to the U.S. Census Bureau, the population of Prince George's County is 64.7 percent black.

Despite the high number of nearby power plants and other pollution sources, the cumulative impacts of this pollution on the health and welfare of Brandywine's residents have not been adequately studied. Many Brandywine residents feel they been forced to bear an unfair and disproportionate share of the cost of development while receiving little benefit, economically or in terms of quality of life.

B. Approval of the Mattawoman Plant.

Mattawoman Energy, LLC filed an application for a Certificate of Public Convenience and Necessity with the Maryland PSC on July 19, 2013.²⁰ At that time, Mattawoman proposed to build a gas-fired power plant with a capacity of 859 megawatts and a 230-kilovolt transmission line. Mattawoman requested a waiver of the normal requirement to provide notice at least two years before beginning construction, which the PSC granted. The PSC delegated the proceeding to the Public Utility Law Judge Division, which oversaw the following process:

- On July 30, 2013, the PSC set a deadline of August 22, 2013, for filing petitions to intervene in the proceeding. The PSC ordered the company to publish notice of the August 22 deadline in a newspaper of general circulation by August 19.
- Mattawoman's advertisement ran in the *Enquirer-Gazette* on August 15, less than one week before the deadline for filing petitions to intervene. No other efforts were made to inform the community of the impending deadline. The *Enquirer-Gazette* is an obscure local paper, one of a group of local weeklies that was in terminal financial straits and that have recently been closed or sold to newspapers outside the area. The *Enquirer-Gazette* had few, if any, paid subscribers in the town or zip code of Brandywine during 2013-2015, and no longer offers home delivery anywhere in Prince George's County.
- On October 16, 2013, well after the August 22 deadline for intervention, the U.S. Air Force filed a petition to intervene in the proceeding. The PSC granted the petition to intervene on November 13, 2013.

¹⁹ Prince George's County was designated non-attainment for fine particulate matter until November 2014, when it was re-designated as a maintenance area for that pollutant. U.S. EPA, *Maryland Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants*, Green Book Nonattainment Areas (April 22, 2016), https://www3.epa.gov/airquality/greenbk/anayo_md.html.

²⁰ The docket for the CPCN proceedings is available on the PSC website, <http://www.psc.state.md.us/> (search for matter number 9330).

- Many residents of Brandywine who eventually heard about plans to build a gas plant nearby did not realize that those plans were in addition to the already-approved Keys plant. They mistakenly assumed that only one new large gas plant was proposed to be sited in their community.
- On September 9, 2013, the PSC issued an order to expedite decision on the application. The order provided for a final decision within ten months, in July 2014.
- On February 19, 2014, the PSC suspended the proceeding indefinitely at the request of MDNR, which had learned that several aspects of the project were not ready for review, and in fact were still in the early stages of planning.
- On October 29, 2014, the PSC recommenced the proceeding, with a new target date in July 2015 for a final decision.
- Mattawoman revised its CPCN application several times in 2014 and 2015, including a major revision on January 30, 2015, that increased the capacity of the plant from 859 megawatts to 990. On March 13, 2015, the PSC reset the schedule for the proceedings, with a new target date of September 30, 2015, for its final decision.
- Following further revisions to Mattawoman's application received in mid-2015, on July 9 the PSC scheduled a new public hearing and comment deadline of August 20, 2015.
- On July 21, 2015, the PSC held a public hearing at the Brandywine Volunteer Fire Department.
- On August 17, 2015, fifteen residents of Prince George's County and three residents of Charles County filed a petition to intervene in the proceeding. On September 25, 2015, the PSC denied the local residents' petition to intervene, calling it untimely and unfairly prejudicial to Mattawoman and the government.
- MDE and MDNR recommended approving the plant subject to conditions without conducting any environmental justice review or review of the potential for the project to have disparate racial impacts.
- On October 13, 2015, the PSC published a tentative order proposing to grant Mattawoman a CPCN. The PSC stated that the proposed order would become final on November 13 unless an administrative appeal was filed by a party to the proceeding. Because the local residents had been denied intervention three weeks earlier, they could not appeal the proposed order.

- On November 13, 2015, noting that no administrative appeals had been filed, the PSC reissued its tentative order as a final order.²¹

C. Public Comments.

In written submissions and at public hearings, concerned community members alerted the PSC to the adverse impacts of the proposed Mattawoman plant and the racially disparate nature of those impacts. At the July 21, 2015 public comment hearing, citizens testified before the PSC and voiced concern about the following aspects of the proposed Mattawoman plant and the CPCN application proceedings:

- Increased traffic during construction of the plant, exacerbating Brandywine's existing problem with traffic congestion.
- The cumulative impact of having multiple large fossil fuel power plants in a concentrated area on local air quality, including increased emissions of ozone precursors.
- The absence of local air quality monitoring stations in Brandywine, and Prince George's County's persistent failure to attain national air quality standards for ozone.
- Shortcomings and defects in the modeling of air quality impacts, including failure to consider emissions from local road traffic.
- Failure to adequately notify or engage the local community in the CPCN application proceedings.
- Failure to consider the racially disparate impact of the Mattawoman plant and other facilities on Brandywine's predominantly black community.
- The transformation of Brandywine into a "sacrifice zone" for the region's development through the construction of the Mattawoman plant and other large fossil fuel plants nearby.

The briefs submitted to the PSC in support of the citizens' unsuccessful petition to intervene identify shortcomings in the CPCN approval process, including failure to provide adequate public notice of the proceedings and failure to include in the proceedings any party

²¹ Order No. 87243, PSC Case No. 9330, Dkt. No. 126 (Nov. 13, 2015). The full order is attached as Exhibit 5 to this complaint.

fairly representing the interests of the local community.²² Citizens' briefs also notified the PSC of the applicability of Title VI of the Civil Rights Act to federally-funded Maryland agencies and the concomitant requirement to conduct an environmental justice analysis of the proposed plant in light of the surrounding area's predominantly black population.²³

D. The PSC Decision.

The PSC's final order grants Mattawoman a CPCN subject to conditions written by MDE and MDNR.²⁴

The order acknowledges the negative impacts of the power plant, but fails to require the Mattawoman Plant to take reasonable steps to ameliorate those impacts. The PSC finds that the concentration of pollution sources in Brandywine is "unfortunate" and notes that "the negative impacts of the plant fall most severely on Brandywine while the benefits are distributed across a much larger geographic area":

An allegation was made in public comments that the Brandywine area was targeted for new projects by power plant companies due to its racial and economic demographics. I find that there is no evidence of any improper motive or conduct by Mattawoman in its choice of a location for the Project. It is very hard to find locations in Maryland which have the infrastructure needed to support a power plant that does not have other areas of legal restrictions which makes those locations unsuitable. It is unfortunate for Brandywine that it is a suitable and legally available area for proposed power plant projects. If a proposed plant to be sited in Brandywine meets all legal requirements (at all governmental levels), the fact that other plants are located nearby is not a legal restriction to another one being built. This is true even though the negative impacts of a plant fall most severely upon Brandywine while the benefits are distributed across a much larger geographic area.²⁵

The PSC acknowledges that there will be noise pollution from the plant, but finds that the noise pollution is "limited." With regard to air and water pollution, the PSC simply defers to the conclusion of MDE and MDNR that all environmental laws will be satisfied: "If the state experts were not convinced that [the gas plant can be constructed and function within all

²² Notice on behalf of Proposed Intervenors Mattawoman Watershed Society, (the Citizens) and Reply to Response of Mattawoman Energy LLC to Joint Petition to Intervene, PSC Case No. 9330, Dkt. No. 113 (Sept. 17, 2015).

²³ *Id.* at A4-A5.

²⁴ Initial Recommended Licensing Conditions, PSC Case No. 9330, Dkt. No. 83 (July 10, 2015) ("CPCN Conditions"). The CPCN Conditions are attached as Exhibit 6 to this complaint.

²⁵ Order No. 87243, PSC Case No. 9330, Dkt. No. 126 (Nov. 13, 2015) at 10-11.

applicable air and water laws and regulations], they would have testified to that effect and would have opposed the Project's construction. I place my trust in their experience[.]”

The PSC agrees that notice to the public was ineffective because notice was placed in newspapers not read by the public.

The PSC refers to the community’s concerns about environmental justice as “strident.” Based on a finding of no evidence of intentionally racist conduct by Mattawoman Energy, the PSC concludes that the community’s concerns are unfounded, stating that the concentration of pollution sources in Brandywine “is not a legal restriction to another one being built.” The PSC does not address whether the CPCN will have a racially discriminatory effect.

IV. LEGAL BACKGROUND

DOT regulations implementing Title VI state that “[n]o person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.” 49 C.F.R. § 21.5(a). These regulations also include the following prohibitions of specific discriminatory acts by recipients of federal funds:

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program. . . may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

49 C.F.R. § 21.5(b).

A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if

the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this part.

49 C.F.R. § 21.5(d).

EPA regulations implementing Title VI state that “[n]o person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance on the basis of race, color, [or] national origin[.]” 40 C.F.R. § 7.30. The regulations also provide a non-exclusive list of specific, prohibited discriminatory acts:

(b) A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.

(c) A recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.

40 C.F.R. § 7.35.

These regulations make clear that discrimination on the basis of race is a violation of Title VI whether it is the purpose of the decision or its effect. 49 C.F.R. § 21.5(d); 40 C.F.R. § 7.35(c).

V. VIOLATIONS OF TITLE VI

Complainants allege that the PSC, MDE, and MDNR have discriminated against the predominantly black community in and around Brandywine on the basis of race by issuing a CPCN to Mattawoman Energy, LLC for construction of the Mattawoman gas plant.

1. Issuance of the CPCN constitutes discrimination on the basis of race because the CPCN will adversely and disproportionately impact the black community in and around Brandywine by:
 - a. contributing to air pollution in a black community that is already overburdened by several local sources of pollution and afflicted by poor air quality;
 - b. contributing to noise in a black community already afflicted by noise;

- c. contributing to traffic congestion in a black community already afflicted by traffic congestion and lack of public transportation; and
- d. depressing property values in a black community already afflicted by lack of economic opportunity.

The PSC, MDE, and MDNR had the capacity to prevent these racially disproportionate adverse impacts by not issuing the CPCN, or requiring that the facility be sited or operated in a manner that would eliminate or mitigate its racially disproportionate impact.

2. The PSC, MDE, and MDNR used criteria and methods that have the effect of discriminating on the basis of race by issuing the CPCN without
 - a. performing an assessment of the potential for the CPCN to have a racially disproportionate adverse impact;
 - b. conducting or requiring air quality monitoring in the community;
 - c. conducting or requiring a community health impact assessment;
 - d. conducting or requiring a community needs assessment; or
 - e. adequately notifying or involving local residents.
3. The CPCN for the Mattawoman plant continues a pattern and practice by the PSC, MDE, and MDNR of utilizing criteria and methods that have the effect of discriminating on the basis of race.

For each of the above reasons, the issuance of this CPCN constitutes prohibited discrimination on the basis of race under Title VI of the Civil Rights Act of 1964 and DOT and EPA regulations.

These allegations are detailed below.

VI. ADVERSE IMPACT

The decision to approve the Mattawoman gas plant will adversely affect the community of Brandywine and other residents in the vicinity of the Mattawoman gas plant. These adverse impacts will result directly from the Mattawoman power plant and from the cumulative impact of the Mattawoman plant in combination with the many pollution sources and patterns of inequitable development already present in the community.

The PSC, MDE, and MDNR do not deny that Brandywine will suffer adverse impacts from the approval of the Mattawoman plant, or that the benefits of the approval will mostly accrue elsewhere. The PSC specifically found that approval of the Mattawoman plant is “unfortunate for Brandywine.”

A. Ozone Precursor Emissions

The Mattawoman plant will degrade air quality in and around Brandywine. First, it will contribute to already unhealthy levels of ground level ozone. The air in Prince George's County, which includes Brandywine, already fails to meet the national air quality standard for ozone, which was set by EPA at the level determined to be requisite to protect public health.²⁶ Approval of the Mattawoman plant will make this air quality problem worse by increasing local emissions of two major contributors to the formation of ground-level ozone, nitrogen oxides and volatile organic compounds.

Maryland has recognized that reducing nitrogen oxides is the most urgently needed measure to reduce harmful ozone. "Reducing locally produced [nitrogen oxides] on peak days limits ozone production, keeping local ozone levels lower."²⁷

The CPCN authorizes the Mattawoman plant to emit 220.7 tons per year of nitrogen oxides and 144.1 tons per year of volatile organic compounds.²⁸ According to Maryland regulations, emissions of these pollutants are "significant" if they exceed 25 tons per year. COMAR 26.11.17.

Ozone causes serious harm to human health, as Maryland recognized in its state implementation plan for ozone:

"When it is breathed into the lungs, ozone reacts with lung tissue. It can harm breathing passages, decrease the lungs' working ability and cause coughing and chest pains; eye and throat irritation; breathing difficulties even for healthy individuals, but especially for those with respiratory problems such as allergies, asthma, bronchitis and emphysema; and greater susceptibility to respiratory infection."²⁹

According to EPA's 2013 Integrated Science Assessment for Ozone, ozone exposures are also shown to increase risks of hospitalization for acute myocardial infarction, coronary atherosclerosis, stroke, and heart disease, even at ambient ozone levels well-below current air quality standards.³⁰

²⁶ EPA, *Green Book Nonattainment Areas: 8-Hr Ozone (2008) Nonattainment Area/State/County Report* (April 22, 2016), available at https://www3.epa.gov/airquality/greenbook/hnca.html#Ozone_8-hr.2008.

²⁷ MDE, *Technical Support Document for COMAR 26.11.38 - Control of NOx Emissions from Coal-Fired Electric Generating Units* (May 26, 2015) at 20, available at http://www.mde.state.md.us/aboutmde/AboutMDEHome/Documents/TSD_Phase1_with_Appendix.pdf.

²⁸ CPCN Conditions at 7 (Ex. 6).

²⁹ Metropolitan Washington Air Quality Committee, *Ozone SIP* (May 23, 2007) at 1-1, <https://www.mwcog.org/uploads/pub-documents/9FhcXg20070525084306.pdf>.

³⁰ EPA, *Integrated Science Assessment for Ozone and Related Photochemical Oxidants* (Feb. 2013), available at <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=247492>.

MDE states that Mattawoman will be required to secure emissions reduction credits for nitrogen oxide and volatile organic compounds at a ratio of 1.3 to 1, but the reductions need not occur in Brandywine, or even in Prince George's County. Mattawoman can use offsets from other areas so long as pollution from the other area "contribute[s]" to pollution in the area of the plant. COMAR 26.11.17.04(D). MDE authorizes the use of offsets from other states, and allows the use of credits from Philadelphia in all areas of Maryland except Baltimore.³¹

B. Nitrogen Dioxide Emissions

The Mattawoman plant will also cause cumulatively unhealthy levels of nitrogen dioxide, a pollutant linked to heart disease, asthma, and stroke. Mattawoman Energy's own analysis predicts violations of the 1-hour air-quality standard for that pollutant near the plant, according to the Environmental Review Document submitted to the PSC, and shows that the Mattawoman plant's direct emissions will be responsible for about two percent of total nitrogen dioxide pollution in the vicinity of the plant.³² The company later increased its estimated nitrogen dioxide emissions,³³ and the Maryland agencies approved the increase.

The PSC, MDE, and MDNR approved the project by excluding significant sources of nitrogen dioxide from the modeling. Specifically, while Mattawoman had included the pollution from major pollution sources located between ten and thirty kilometers away, MDNR prepared a new analysis that excluded most of those sources, saying that EPA did not require that their pollution be included.³⁴ Only by excluding that pollution from the analysis did MDNR arrive at calculations showing no violations of the nitrogen dioxide air quality standards.

According to EPA, nitrogen dioxide levels will be even higher in vehicles and near roadways than the levels predicted based on data from air quality monitors.³⁵ "Individuals who spend time on or near major roadways can experience short-term NO₂ exposures considerably higher than measured by the current network. In fact, in-vehicle concentrations can be 2-3 times higher than measured at nearby area-wide monitors."³⁶ Further, harmful nitrogen oxide emissions from motor vehicles increase dramatically at lower speeds, especially during stop and go traffic when roads are congested. But neither Mattawoman nor the Maryland agencies

³¹ MDE, *Emission Reduction Credits Frequently Asked Questions* at 2 (attached as Ex. 11).

³² Environmental Review Document, PSC Case No. 9330, Dkt. No. 1 (July 19, 2013) at 5-8.

³³ Supplemental Environmental Review Document ("SERD"), PSC Case No. 9330, Dkt. No. 57 (Jan. 30, 2015) at Appendix J, Table 7-1B.

³⁴ MDNR - Power Plant Research Program, *Environmental Review of the Proposed Mattawoman Energy Center Project*, PSC Case No. 9330, Dkt. No. 83 (July 10, 2015) at 4-81.

³⁵ EPA, *Nitrogen Dioxide: Health*, available at <https://www3.epa.gov/airquality/nitrogenoxides/health.html>.

³⁶ *Id.*

included local motor vehicles in the emissions used for their modeling. The combined impact of vehicle and power plant emissions near roadways poses a serious threat to the health of the community, including people in the private residences, senior home, and elementary school, middle school, and high school located in close proximity to both the power plants and the roads that already experience congestion and will experience increased congestion resulting from construction of the Mattawoman gas plant and other recently approved power plants.³⁷

C. Fine Particulate Matter Emissions

The CPCN also authorizes the Mattawoman plant to emit 147 tons per year of fine particulate matter (PM_{2.5}). It also will lead to increased diesel exhaust from vehicles and heavy machinery, especially during construction of the plant. This pollution threatens adverse direct and cumulative impacts for the local population, including serious health problems.

According to MDE and EPA, fine particulate matter damages the respiratory system and the cardiovascular system, causing “decreased lung function, chronic bronchitis, respiratory symptoms such as asthma attacks and difficulty breathing, nonfatal heart attacks, irregular heartbeat, and premature death in individuals with pulmonary or cardiac disease.”³⁸ Children, the elderly, and individuals with pre-existing pulmonary or cardiac disease are the most susceptible.

EPA recognizes that “diesel exhaust contains significant levels of small particles” and that “diesel particulate matter is likely to cause cancer in humans and cause other acute and chronic health effects.”³⁹

Recent studies also strongly suggest a link between fine particulate matter exposure during pregnancy and autism. One 2014 study by the Harvard School of Public Health found that a woman who lives in an area that is in the highest 25 percent of fine particulate matter levels during pregnancy is more than twice as likely to have a child diagnosed with autism spectrum disorder than a woman who lives in an area in the lowest 25 percent.⁴⁰ The correlation

³⁷ Prince George’s County Planning Dept correspondence at 8 (“truck traffic conflicts . . . could pose major challenges for commuters”), 11 (giving failing grades for traffic congestion to several intersections in Brandywine) (attached as Ex. 12).

³⁸ Washington DC-MD-VA 1997 PM_{2.5} Redesignation Request at 1 (May 22, 2013), http://www.mwcog.org/environment/air/downloads/PM/PM2.5%20RR_Final%20Version.pdf.

³⁹ EPA Region 1, *Diesel Exhaust and Your Health*, https://www3.epa.gov/region1/eco/diesel/health_effects.html.

⁴⁰ Raz, Raanan, et al., Autism Spectrum Disorder and Particulate Matter Air Pollution before, during, and after Pregnancy: A Nested Case–Control Analysis within the Nurses’ Health Study II Cohort, *Environ. Health Perspect.* 123:264–270 (March 2015), available at <http://dx.doi.org/10.1289/ehp.1408133>.

was strongest for exposures during the third trimester, and did not hold for exposure to coarse particles, helping to rule out potential confounding variables.

Mattawoman did not collect any data on levels of fine particulate matter already in the air in Brandywine. Instead the company's air quality analysis uses data collected ten miles away, at an equestrian center in Upper Marlboro. Upper Marlboro is northeast of Brandywine, while most of the largest sources of fine particulate matter in the area are in Brandywine or south of Brandywine.⁴¹

Air quality readings in Upper Marlboro barely meet national air quality standards adopted in 1997.⁴² The state of Maryland has informed EPA that it "agree[s] with the scientific community who believe that more stringent . . . fine particle standards are needed."⁴³

There is no safe level of exposure to fine particulate matter, and EPA's air quality standards for fine particulate matter are not set at a level of zero risk.

Mattawoman claims that the plant will not cause exceedances of air quality standards for fine particulate matter, but the company admits it only modeled some of the plant's fine particulate matter emissions. Fine particulate matter is made up of both filterable particulate matter, which is emitted directly from the stack, and condensable particulate matter, which forms in the atmosphere as a result of chemical reactions between other pollutants, including nitrogen oxides, sulfur dioxide, and ammonia. Mattawoman's air quality analysis models filterable particulate matter, but not condensable particulate matter, even though condensable particulate matter accounts for a significant fraction of the total fine particulate matter that the plant will produce.⁴⁴

Condensable fine particulate matter is addressed only "qualitatively," without hard data.⁴⁵ Mattawoman predicts that overall fine particulate matter in the DC-MD-VA region will decline, relying on the planned deactivation of coal-fired generation units at Chalk Point and Dickerson.⁴⁶ But the owner of those generation facilities, NRG Energy, cancelled the planned deactivation of those units on February 29, 2016.⁴⁷

⁴¹ Environmental Review Document, PSC Case No. 9330, Dkt. No. 1 (July 19, 2013) at 2-14, 2-16.

⁴² Redesignation Request at 7,
http://www.mwco.org/environment/air/downloads/PM/PM2.5%20RR_Final%20Version.pdf.

⁴³ MWCOG, *Washington DC-MD-VA 1997 PM_{2.5} Maintenance Plan* (May 22, 2013) at 17.

⁴⁴ Revised Air Assessment Report, Appendix J at 5-2, PSC Case No. 9330, Dkt. No. 57 (Jan. 30, 2015).

⁴⁵ *Id.* at 5-2, 5-14.

⁴⁶ *Id.* at 5-16; Environmental Review Document, PSC Case No. 9330, Dkt. No. 1 (July 19, 2013) at 2-14, 2-16.

⁴⁷ PJM list of withdrawn deactivation requests (attached as Ex. 14),
<http://www.pjm.com/~media/planning/gen-retire/withdrawn-deactivation-requests.ashx>.

The plant's contribution to fine particulate matter pollution will also be higher than estimated because Mattawoman, MDE, DNR, and the PSC did not consider the plant's high emissions of ammonia in the analysis of fine particulate matter pollution.⁴⁸ Ammonia is a constituent of fine particulate matter, and can be both filterable and condensable. Mattawoman estimates that it will emit 198 tons per year of ammonia, which is approximately five times more ammonia than is emitted by the largest source of ammonia currently operating in the state of Maryland.⁴⁹ Maryland authorized these very high ammonia emissions, and the resulting contribution to deadly fine particulate matter, in an effort to control acid rain.⁵⁰ (Because ammonia has a high (basic) pH, it helps to balance out the low (acidic) pH of other pollutants emitted by the plant.)

D. Noise and Traffic Congestion

According to Mattawoman's application, noise from the facility will exceed regulatory limits at nearby homes. Noise levels will be loudest during startup, which often occurs during the early morning hours, disturbing people's sleep. Startup will occur over 250 times a year, according to Mattawoman's environmental review documents.⁵¹ Mattawoman's consultant provided recommendations for keeping noise to an acceptable level⁵², but the CPCN does not require Mattawoman to implement those recommendations. Even though Mattawoman's application identifies startup noise as the major concern, the CPCN only requires Mattawoman to monitor noise generated during regular operations.⁵³ The regulatory limits that Mattawoman predicts will be exceeded were adopted to prevent noise that "[m]ay jeopardize . . . health, general welfare, or property." Md. Code Ann., Envir. § 3-102.

Mattawoman's consultant also identified ideal goals (below the regulatory limits) needed to keep noise from the plant at a level that will not disturb daily life for nearby residents, taking into account noise levels that already exist in the community. The consultant found that, given the design of the plant and its close proximity to homes, those ideal noise levels cannot be achieved.⁵⁴ Although Brandywine Elementary School is less than a half mile

⁴⁸ Revised Air Assessment Report, Appendix J at 5-15 to 5-16, PSC Case No. 9330, Dkt. No. 57 (Jan. 30, 2015).

⁴⁹ MDNR ERD, Dkt. No. 83 at 4-83; MDE, Response to Comments Received on the Mattawoman Energy Center Project, PSC Case No. 9330, Dkt. No. 112 (Sept. 16, 2015) at 4.3.8.

⁵⁰ SERD, Case No. 9330, Dkt. No. 57 (Jan. 30, 2015) at Appendix J 5-15 to 5-16 (Revised Air Assessment Report).

⁵¹ *Id.* at Appendix J 5-4.

⁵² *Id.* at Appendix I 14-15.

⁵³ CPCN Conditions at 56 (Ex. 6).

⁵⁴ SERD, Case No. 9330, Dkt. No. 57 (Jan. 30, 2015) at Appendix I 16.

away from these homes no consideration was given to whether noise disturbances will adversely affect schoolchildren.

The Brandywine area already suffers from severe traffic congestion.⁵⁵ Approval of the Mattawoman plant, alone and in combination with approval of the Keys plant, will worsen traffic congestion in and around Brandywine. This is an adverse impact in itself. Further, additional traffic and slower-moving traffic, including stop-and-go traffic, will increase levels of fine particulate matter and nitrogen dioxide near the roadways, where community members live, work, and go to school.

The contribution to traffic congestion will be worst during construction of the plant, a two-year period when up to 645 workers will need access to the site.⁵⁶

According to the Prince George's County planning department, truck traffic during construction could pose major challenges for commuters in the area. The planning department originally recommended installation of additional traffic signals to address congestion, but concluded that traffic impacts would be acceptable after revising its analysis procedures.⁵⁷

The CPCN includes no conditions to address the community's traffic concerns, except a requirement to submit plans to the Maryland State Highway Administration, which "reserves the right" to require improvements.⁵⁸

E. Economic Impacts

These harmful impacts and others may depress local property values. Both home-buyers and renters are less willing to pay for housing near fossil fuel-fired power plants than they are for other comparable housing, depressing property values. Housing prices decline by between three and five percent, on average, within two miles of gas-fired and coal-fired power plants. When the power plant is large (>275 megawatts), housing prices decline by 5.5 percent, on average.⁵⁹ Brandywine, which will have three large fossil fuel-fired power plants as a result of the Mattawoman approval, is at risk of even greater declines in property values, compared to what property values would be without the power plants.

⁵⁵ ERD, Case No. 9330, Dkt. No. 1 (July 2013) at pdf 290 (intersection operates "below acceptable standards"); Prince George's County Planning Dept correspondence at 8 ("truck traffic conflicts . . . could pose major challenges for commuters"), 13 (giving failing grades for traffic congestion to several intersections in Brandywine) (attached as Ex. 12).

⁵⁶ *Id.* at Appendix K 20.

⁵⁷ Prince George's County Planning Dept correspondence at 8, 14 (Ex. 12).

⁵⁸ CPCN Conditions at 56-57 (Ex. 6).

⁵⁹ Davis, Lucas. *The Effect of Power Plants on Local Housing Values and Rents: Evidence From Restricted Census Microdata* (June 18, 2008) at 17, 20 (attached as Ex. 15).

The company admits that the plant will stimulate "little if any" local commercial activity.⁶⁰

VII. DISPROPORTIONALITY

The adverse impacts described above will be borne disproportionately by the black community of Brandywine and black residents who live, work, and go to school in the vicinity of the Mattawoman gas plant and other local pollution sources. The population of Brandywine is 72.2 percent black,⁶¹ and the population within 10 miles and five miles of the site designated for the Mattawoman plant is 67 percent black.⁶² In stark contrast, the population of the state of Maryland is only 30 percent black.

Three large (>250 megawatts) fossil fuel-fired power plants are located in or immediately outside of Brandywine, more than any other community in the state. Five large fossil fuel-fired power plants are located within thirteen miles of Brandywine, a concentration not repeated anywhere else in the state. Brandywine is home to 23 percent of the large fossil fuel-fired power plants in the state (3 out of 13), even though it has only .17 percent of the land area of the state (21 square miles out of 12407), and .12 percent of the population of the state (6719 people out of 5.773 million), according to 2010 U.S. Census data.

The racially discriminatory impact of siting five large fossil fuel-fired power plants in or near Brandywine continues a pattern that holds throughout the state of Maryland. Across the entire state, power plants are concentrated in counties with larger percentages of black residents. Prince George's County, in which Brandywine is located, will have both the highest number of large fossil fuel-fired power plants (4) and the highest percentage of black residents (64.5).⁶³ In stark contrast to Prince George's County, the fourteen Maryland counties with the lowest percentages of black residents (fifteen percent or less) have only three large fossil fuel-fired power plants among them, for an average of .2 power plants per county. Howard County has no large fossil fuel fired power plants (operating or permitted), and Montgomery County has only one, even though those Maryland counties have broadly similar land use patterns and income levels to Prince George's County. But while the population of Prince George's County is 64.5 percent black, the population of Howard County is only 17.5 percent black, and the population of Montgomery County is only 17.2 percent black.

⁶⁰ ERD, Case No. 9330, Dkt. No. 1 (July 2013) at 5-8.

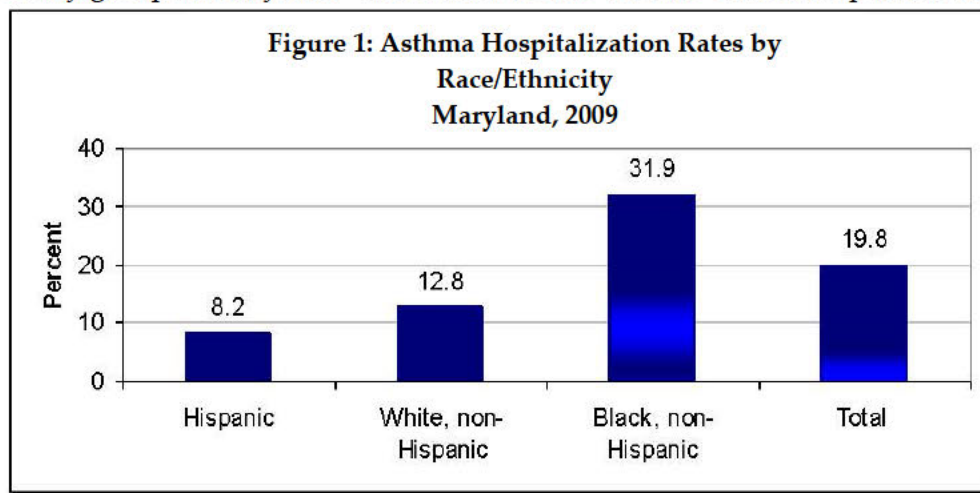
⁶¹ Unless otherwise noted, the demographic information discussed in this section is from the U.S. Census Bureau.

⁶² EPA, EJSCREEN: Environmental Justice Screening and Mapping Tool, <https://www.epa.gov/ejscreen>.

⁶³ Maryland Power Plant Research Program, *Electricity in Maryland Fact Book 2014* (attached as Ex. 9).

Marylanders living within ten miles of a power plant are disproportionately likely to be black. While the population of Maryland is only 30 percent black, the population within ten miles of a large power plant is 36 percent black.⁶⁴ This is true even though the black population of Maryland is concentrated in urban areas, where siting a large power plant is difficult or impossible.

Consistent with these patterns in the siting of pollution sources and resulting poor air quality, black Marylanders suffer from worse health outcomes in almost every category than their white counterparts. These disparities include higher rates of fatal heart disease and stroke; conditions which are caused or exacerbated by pollutants produced by fossil fuel-fired power plants.⁶⁵ Blacks also bear a disproportionate share of the asthma burden in Maryland. For example, as shown in Figure 1, non-Hispanic blacks have the highest asthma hospitalization rates out of any group in Maryland – more than double the rate of non-Hispanic whites.⁶⁶



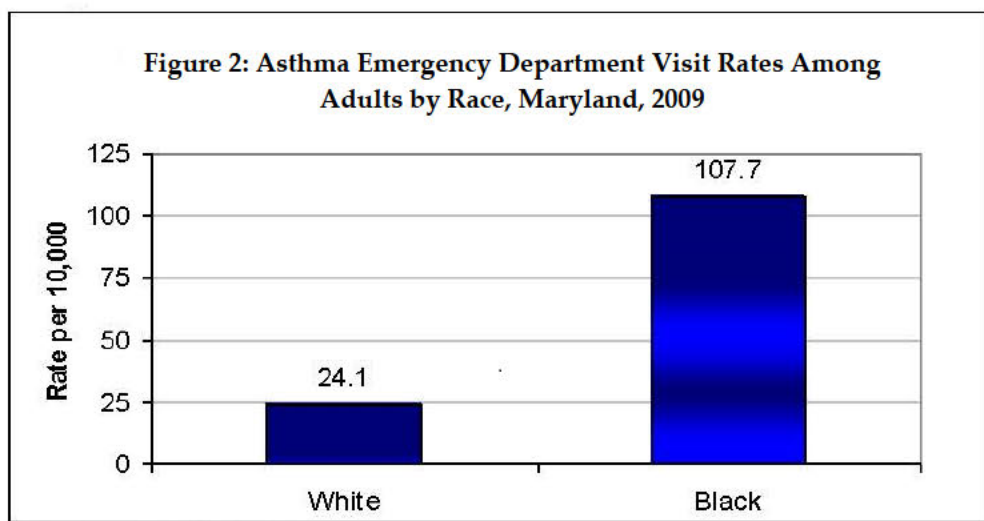
Black Marylanders are over 4 times as likely as white Marylanders to visit the emergency department for asthma (Figure 2).⁶⁷

⁶⁴ Analysis using data from EJSCREEN.

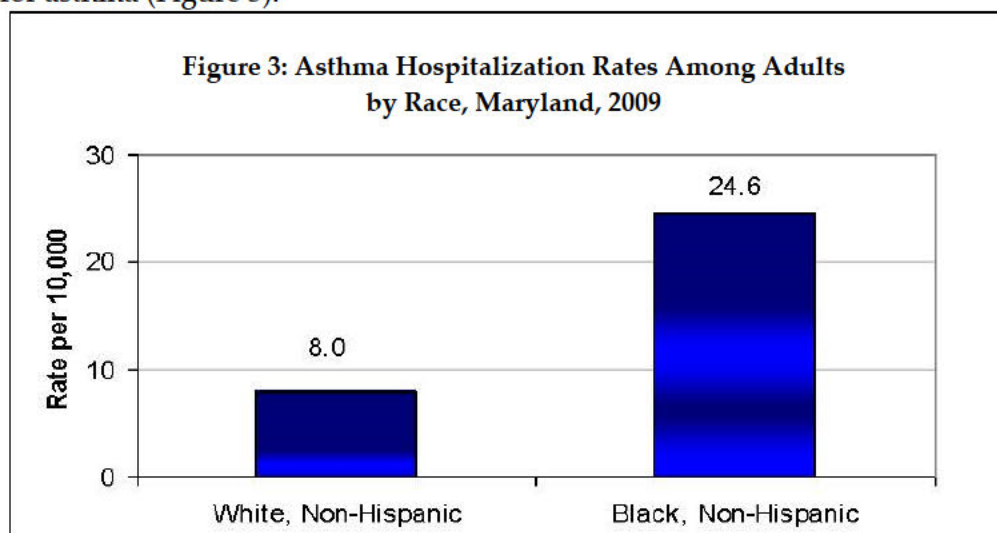
⁶⁵ Maryland Department of Health and Mental Hygiene (“DHMH”), *Maryland Chartbook of Minority Health and Minority Health Disparities Data* (Dec. 2012) at 15, available at: <https://sph.umd.edu/sites/default/files/files/Maryland%20Health%20Disparities%20Data%20Chartbook%202012%20021413.pdf>.

⁶⁶ DHMH, *Asthma in Maryland 2011*, at 57, available at: http://phpa.dhmh.maryland.gov/mch/Documents/Asthma_in_Maryland-2011.pdf.

⁶⁷ *Id.* at 52.



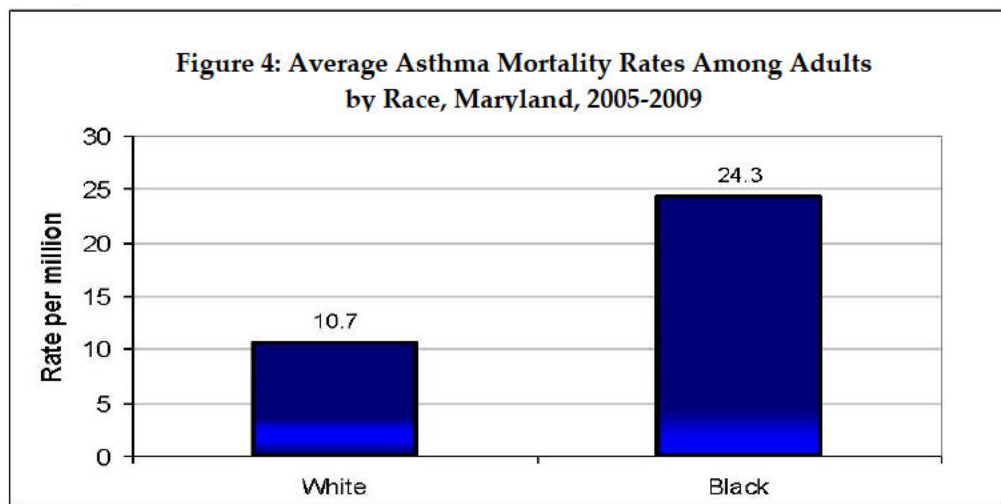
Furthermore, they are over 3 times as likely as white, non-Hispanic Marylanders to visit the hospital for asthma (Figure 3).⁶⁸



Black Marylanders are nearly 2.5 times more likely to die from asthma than white Marylanders (Figure 4).⁶⁹

⁶⁸ *Id.*

⁶⁹ *Id.* at 53.



VIII. CRITERIA AND METHODS FOR PLANT APPROVAL

No review was conducted, by the PSC, MDE, or MDNR, of the potential for the Mattawoman gas plant to have a disparate impact on the basis of race, individually or cumulatively in combination with other pollution sources and other unchecked development. After community members presented evidence of disproportionate adverse impacts at the public hearings, the PSC stated that disproportionate adverse impacts are no obstacle to issuance of the CPCN.⁷⁰ That is wrong as a matter of law, and clearly demonstrates that the Maryland agencies are in violation of Title VI and the implementing regulations of DOT and EPA.

No air quality monitoring in Brandywine or within ten miles was done for review of this project, and no already-existing data was available for this area. Data from a monitor at an equestrian center in Upper Marlboro, MD, more than ten miles away, was used for the assessment of fine particulate matter. Data from a monitor at a park in Prince William County, approximately 45 miles away in rural Virginia, was used for the assessment of nitrogen dioxide. No mathematical modeling whatsoever was conducted for ozone. No information was collected on weather or prevailing winds in the Brandywine community. Instead, some of the analysis used weather information from Dulles airport, located in Virginia more than 40 miles away, while other analysis used weather information from Reagan National Airport, located in Virginia more than 15 miles away. No analysis was done of the air quality impacts in Brandywine or the surrounding area resulting from increased traffic and traffic congestion. Issuance of the CPCN without adequate analysis of these potential adverse cumulative impacts constitutes use of a criteria or method that has the effect of discriminating on the basis of race.

⁷⁰ Order No. 87243, PSC Case No. 9330, Dkt. No. 126 (Nov. 13, 2015) at 10-11.

As detailed above, and as recognized by the PSC, notice of this project to the people of Brandywine was ineffective. Local residents were denied the opportunity to participate fully in the decision-making process. The failure of the PSC, MDE, and MDNR to notify or involve the affected local community in the decision whether to issue the CPCN constitutes use of a criteria or method that has the effect of discriminating on the basis of race.

The CPCN for the Mattawoman plant continues a pattern and practice by the PSC, MDE, and MDNR of utilizing criteria and methods that have the effect of discriminating on the basis of race. Across the entire state of Maryland, blacks are more likely to live within ten miles of a fossil fuel-fired power plant. And fossil fuel-fired power plants are dramatically more likely to be sited in counties with higher percentages of black residents.

Individually and collectively, these criteria and methods used by the PSC, MDE, and MDNR to decide whether and on what terms to issue the CPCN constitute prohibited discrimination in violation of Title VI of the Civil Rights Act of 1964 and the regulations of DOT and EPA. They constitute “criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race . . . or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race” under 49 C.F.R. § 21.5(b)(2), and “criteria or methods of administering [the] program or activity which have the effect of subjecting individuals to discrimination because of their race” under 40 C.F.R. § 7.35.

IX. LESS DISCRIMINATORY ALTERNATIVES

The following less discriminatory alternatives were available to the PSC, MDE, and MDNR:

1. Afford the Brandywine community greater opportunities for participation in the permitting process, including providing meaningful, effective notice to all local residents and granting them intervention in the CPCN proceeding on an equal footing with Mattawoman Energy, the state agencies, and the U.S. Air Force.
2. Conduct a thorough and meaningful review of the potential for the project to impose disproportionate burdens on the basis of race, and evaluate the reasons why black Marylanders are disproportionately exposed to the harmful effects of fossil-fuel-fired power generation throughout the state.
3. Require Mattawoman Energy to conduct ambient air quality monitoring in Brandywine for all pollutants of concern, including ozone, nitrogen dioxide, and fine particulate matter, to conduct a thorough health assessment in the community and the area, to make reports to the PSC, MDE, MDNR, and the community, and to expeditiously address air quality violations, as conditions of the CPCN.
4. Impose conditions through the CPCN to reduce traffic congestion and associated air pollution, including provision of public transportation, coordination of construction

schedules with the other power plants in the area, and installation of additional traffic signals.

5. Meaningfully evaluate alternative sites where construction and operation of a large gas plant would not disproportionately impact the black community.
6. Determine that new solar and wind capacity, promotion of energy efficiency, or both would serve the public interest better than construction of yet another polluting fossil-fuel-fired power plant, or at least evaluate those alternatives.

X. RELIEF

Complainants request that the DOT Departmental Office of Civil Rights and the EPA Office of Civil Rights accept this complaint and investigate whether the PSC, MDE, and MDNR violated Title VI of the Civil Rights Act and its implementing regulations.⁷¹ For reasons of economy, we request that these investigations be consolidated, and that EPA and DOT collaborate and coordinate on remedial approaches. Because the coordinating entity at the state level—the PSC—is funded by DOT, we request that DOT take the lead role. We also request that the Civil Rights Division of the Department of Justice play an active role in coordinating these federal investigative and enforcement actions, consistent with the mission of the Federal Coordination & Compliance Section.

Complainants request that the state agencies be brought into compliance by requiring them to withdraw issuance of the CPCN and withhold issuance of a new CPCN unless and until they: a) conduct a full and fair analysis of disparate impacts from the proposed facility (including air quality monitoring and modeling, a health assessment, and a community needs assessment); b) conduct a full and fair consideration of alternatives that would avoid such disparate impacts; and c) require that any decision to issue a new or revised CPCN is conditioned on Mattawoman taking steps to ameliorate the negative impacts of the Mattawoman project upon Brandywine's black community.⁷² The PSC, MDE, and MDNR must also revise their regulations and procedures to adopt environmental justice as an explicit consideration and goal in all decisions related to fossil fuel-fired power generation.

The PSC, MDE, and MDNR must take steps to ameliorate the negative impacts of the Mattawoman project upon Brandywine's predominantly black community. They must mandate regular air quality monitoring for ozone, nitrogen dioxide, fine particulate matter, and all other air pollutants of concern, with at least two air quality monitors within the Brandywine

⁷¹ If either DOT or EPA rejects this complaint, Complainants request that the other agency conduct an investigation alone or jointly with other federal agencies, as appropriate. *See* 28 C.F.R. § 42.408(b) ("Where a federal agency lacks jurisdiction over a complaint, the agency shall, wherever possible, refer the complaint to another federal agency . . .").

⁷² At a minimum, the PSC, MDE, and MDNR should condition the extant CPCN on satisfaction of these requirements.

community (one along a congested roadway) and a third at the elementary school, independently monitored, as well as regular reporting of the results of this monitoring to the authorities and the public. If this monitoring and reporting discloses unhealthy levels of air pollution, effective, expeditious measures must be taken to protect public health. The agencies must mandate measures to ameliorate traffic congestion and associated air pollution, including coordination of construction schedules with the other power plants in the area, installation of traffic signals, and a feasibility study of improved public transportation. In all of these matters, the PSC, MDE, MDNR, and Mattawoman Energy, LLC should engage fully with a representatives of the local community, including the Community Development Exchange, a community-based non-profit entity affiliated with the Complainant groups and located at 8787 Branch Avenue, Suite 17, Clinton, MD 20735, and be guided by the community needs assessment.

If the PSC, MDE, and MDNR do not come into compliance voluntarily, Complainants request that DOT and EPA suspend or terminate the federal financial assistance that those agencies receive.⁷³

Sincerely,



Neil Gormley
Carter Hall
Earthjustice
1625 Massachusetts Ave NW
Suite 702
Washington, DC 20036
ngormley@earthjustice.org
202-797-5239

Christine Ernst
Earthjustice
48 Wall Street
19th Floor
New York, NY 10005
cernst@earthjustice.org

⁷³ See, e.g., Letter from Peter M. Rogoff, Adm'r, Fed. Transit Admin., to Steve Heminger, Exec. Dir., Metro. Transp. Comm'n, & Dorothy Dugger, Gen. Manager, S.F. Bay Area Rapid Transit Dist. (Jan. 15, 2010), available at http://www.bart.gov/sites/default/files/docs/BART_MTC_Letter_On_OAC.pdf (notifying state agencies that they were "in danger of losing federal funding" from the Federal Transit Administration because of Title VI noncompliance).

May 11, 2016

Page 29

212-845-7385

On behalf of:

Brandywine | TB Southern Region Neighborhood Coalition

Kamita Gray

md.brandywine@voiceyouropinion.info

Patuxent Riverkeeper

Fred Tutman

fred@paxriverkeeper.org

Director, Office of Civil Rights

cc (via email)

Gina McCarthy

Administrator

Environmental Protection Agency

Mail Code 1102A

1200 Pennsylvania Ave., NW

Washington, DC 20460

Mccarthy.gina@epa.gov

Anthony Foxx

Secretary of Transportation

Department of Transportation

1200 New Jersey Ave, SE

Washington, DC 20590

Anthony.Foxx@dot.gov

Lilian Dorka

Deputy Director, Office of Civil Rights

Environmental Protection Agency

Dorka.lilian@epa.gov

Matthew Tejada

Director, Office of Environmental Justice

Environmental Protection Agency

Tejada.matthew@epa.gov

Shawn M. Garvin

Regional Administrator, Region 3

Environmental Protection Agency

Garvin.shawn@epa.gov

Samantha Beers
Office of Enforcement, Compliance, and
Environmental Justice, Region 3
Environmental Protection Agency
Beers.samantha@epa.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
CIVIL RIGHTS

May 12, 2016

Return Receipt Requested

Certified Mail#: 7015 1520 0002 0019 2489

In Reply Refer To:

File Nos 28R-16-R3,
29R-16-R3, and 30R-16-R3

Mr. Neil Gormley
Mr. Carter Hall
Earthjustice
1625 Massachusetts Ave. NW
Suite 702
Washington, DC 20036

Return Receipt Requested

Certified Mail#: 7015 1520 0002 0019 2496

In Reply Refer To:

File No. 28R-16-R3,
29R-16-R3, and 30R-16-R3

Ms. Christine Ernst
Earthjustice
48 Wall Street
19th Floor
New York, NY 10005

Re: Acknowledgement of Receipt of Administrative Correspondence

Dear Messrs Gormley and Hall and Ms. Ernst:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), received your correspondence on May 11, 2016.

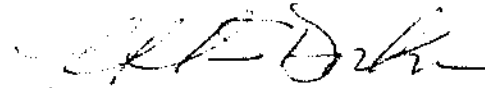
The OCR is responsible for processing and resolving complaints alleging discrimination by programs or activities that receive financial assistance from the EPA. OCR will review your correspondence in light of EPA's nondiscrimination regulation to determine whether it is a complaint that falls within OCR's jurisdiction. Once this jurisdictional review is completed, the OCR will notify you as to whether it will accept your complaint for investigation or reject, or refer the complaint to another Federal agency.

Mr. Neil Gormley
Mr. Carter Hall
Ms. Christine Ernst

Page 2

In the interim, if you have any questions about the status of this correspondence, please contact Laura Bachle by telephone at (202) 566-2468 or bachle.laura@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Lilian S. Dorka", with a stylized flourish at the end.

Lilian S. Dorka
Deputy Director
Office of Civil Rights

cc Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office

Cecil Rodrigues
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA, Region 3

Mary Coe
Regional Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
CIVIL RIGHTS

May 12, 2016

Return Receipt Requested

Certified Mail#: 7015 1520 0002 0019 2540

In Reply Refer To:

EPA File No. 30R-16-R3

Mark J. Belton, Secretary
Maryland Department of Natural Resources
580 Taylor Avenue
Tawes State Office Building
Annapolis, Maryland 21401

Re: Acknowledgement of Receipt of Administrative Correspondence

Dear Mr. Belton:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), received correspondence on May 11, 2016, involving the Maryland Department of Natural Resources.

The OCR is responsible for processing and resolving complaints alleging discrimination by programs or activities that receive financial assistance from the EPA. OCR will review the correspondence in light of EPA's nondiscrimination regulation to determine whether it is a complaint that falls within OCR's jurisdiction. Once this jurisdictional review is completed, the OCR will notify you as to whether it will accept the complaint for investigation or reject, or refer the complaint to another Federal agency.

In the interim, if you have any questions about the status of this correspondence, please contact Laura Bachle by telephone at (202) 566-2468 or bachle.laura@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "LSDorka", is written over a horizontal line.

Lilian S. Dorka
Deputy Director
Office of Civil Rights

cc Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office

Cecil Rodrigues
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA, Region 3

Mary Coe
Regional Counsel



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

JUN 14 2016



In Reply Refer To:

DOT# 2016-0361

EPA File Nos. 28R-16-R3,
29R-16-R3, and 30R-16-R3

Neil Gormley
Carter Hall
Earthjustice
1625 Massachusetts Ave, NW
Suite 702
Washington, DC 20036

Christine Ernst
Earthjustice
48 Wall Street
19th Floor
New York, NY 10005

Subject: Notification of Acceptance for Investigation of Administrative Complaint

Dear Messrs. Gormley and Hall and Ms. Ernst:

This is to notify you that the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR) with the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), have accepted for investigation the complaint filed by Earthjustice on behalf of the Brandywine TB Coalition and Patuxent Riverkeeper against the Maryland Public Service Commission (PSC), the Maryland Department of the Environment (MDE), and the Maryland Department of Natural Resources (MDNR) (collectively, "recipients"). Your complaint was received on May 11, 2016, and alleges violations of Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, including Title VI regulations administered by DOT (49 Code of Federal Regulations, Part 21) and EPA (40 Code of Federal Regulations, Part 7).

Pursuant to DOT's and EPA's nondiscrimination regulations, the Offices of Civil Rights conduct preliminary reviews of administrative complaints received for acceptance, rejection, or referral to the appropriate agency. *See* 49 C.F.R. § 21.11(c); *see also* 40 C.F.R. § 7.120(d)(1). Complaints must meet the Agencies' jurisdictional requirements to be accepted for investigation.

After careful consideration, DOT and EPA have determined that the complaint meets the jurisdictional requirements of both agencies, and therefore the complaint will be jointly investigated.

Accordingly, the investigation will focus on:

1. Whether the process and decision to issue a Certificate of Public Convenience and Necessity (CPCN) to Mattawoman Energy, LLC for the construction of a natural gas-

fired power plant in Brandywine, Maryland discriminated on the basis of race, color, or national origin, in violation of Title VI; and

2. Whether the public engagement process prior to the decision to issue a CPCN discriminated on the basis of race, color, or national origin, in violation of Title VI.

The investigation will be conducted in accordance with the DOT's *External Civil Rights Complaint Processing Manual*, and EPA OCR's *Interim Case Resolution Manual*.

The decision to investigate the issues above does not constitute a decision on the merits of the complaint. DOT and EPA will begin a joint process to gather the relevant information, discuss the matter further with you and the recipients, if appropriate, and determine next steps utilizing their internal procedures. Both DOT's and EPA's nondiscrimination regulations provide that Offices of Civil Rights will attempt to resolve complaints informally whenever possible. 49 C.F.R. § 21.11(d); 40 C.F.R. § 7.120(d)(2). Accordingly, DOT and EPA are willing to discuss, at any point during the process, offers to informally resolve the complaint, and may, to the extent appropriate, offer alternative dispute resolution (ADR) as described at <http://www.epa.gov/ocr/frequently-asked-questions-about-use-alternative-dispute-resolution-resolving-title-vi>. We will be contacting both you and representatives of the recipients in the future to discuss potential interest in pursuing ADR, as well as the recipients' interest in entering into informal resolution discussions.

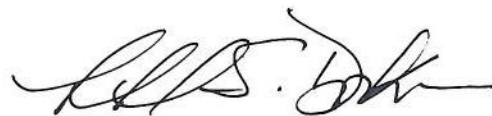
No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 49 C.F.R. § 21.11(e); *see also* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with DOT and/or EPA. Any questions or concerns that you have regarding the investigative process and your rights can be discussed with the investigators.

Please do not hesitate to contact Ryan Fitzpatrick, Lead Civil Rights Analyst in DOT's Departmental Office of Civil Rights, or Brittany Martinez, Case Manager in EPA's Office of Civil Rights, with any questions about the investigation. Mr. Fitzpatrick can be reached at (202) 366-1979, or ryan.fitzpatrick@dot.gov. Ms. Martinez can be reached at (202) 564-0727, or martinez.brittany@epa.gov.

Sincerely,



Yvette Rivera
Associate Director
Department Office of Civil Rights
U.S. Department of Transportation



Lilian S. Dorka
Deputy Director, Interim Director
Office of Civil Rights
U.S. Environmental Protection Agency



Rosanne Goodwill
Director
Office of Civil Rights
Pipeline and Hazardous Materials Safety Administration



U.S. Department of
Transportation

Office of the Secretary
of Transportation

JUN 14 2016



In Reply Refer To:

DOT# 2016-0361

EPA File Nos. 28R-16-R3,
29R-16-R3, and 30R-16-R3

Mark J. Belton
Secretary
Maryland Department of Natural Resources
580 Taylor Avenue
Annapolis, MD 21401

Subject: Notification of Acceptance for Investigation of Administrative Complaint

Dear Mr. Belton:

This is to notify you that the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR) with the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), have accepted for investigation the complaint filed by Earthjustice on behalf of the Brandywine TB Coalition and Patuxent Riverkeeper against the Maryland Public Service Commission (PSC), the Maryland Department of the Environment (MDE), and the Maryland Department of Natural Resources (MDNR) (collectively, "recipients"). The complaint was received on May 11, 2016, and alleges violations of Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, including Title VI regulations administered by DOT (49 Code of Federal Regulations, Part 21) and EPA (40 Code of Federal Regulations, Part 7).

Pursuant to DOT's and EPA's nondiscrimination regulations, the Offices of Civil Rights conduct preliminary reviews of administrative complaints received for acceptance, rejection, or referral to the appropriate agency. *See* 49 C.F.R. § 21.11(c); *see also* 40 C.F.R. § 7.120(d)(1). Complaints must meet the Agencies' jurisdictional requirements to be accepted for investigation. After careful consideration, DOT and EPA have determined that the complaint meets the jurisdictional requirements of both agencies, and therefore, the complaint will be jointly investigated.

Accordingly, the investigation will focus on:

1. Whether the process and decision to issue a Certificate of Public Convenience and Necessity (CPCN) to Mattawoman Energy, LLC for the construction of a natural gas-fired power plant in Brandywine, Maryland discriminated on the basis of race, color, or national origin, in violation of Title VI; and

2. Whether the public engagement process prior to the decision to issue a CPCN discriminated on the basis of race, color, or national origin, in violation of Title VI.

The investigation will be conducted in accordance with the DOT's *External Civil Rights Complaint Processing Manual*, and EPA OCR's *Interim Case Resolution Manual*. The decision to investigate the issues above does not constitute a decision on the merits of the complaint. DOT and EPA will begin a joint process to gather the relevant information, discuss the matter further with you or your designee, if appropriate, and determine next steps utilizing the Agencies' internal procedures. In the intervening time, DOT and EPA will provide you with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving a copy of the letter. *See, e.g.,* 40 CFR § 7.120(d)(1)(ii-iii).

Both DOT's and EPA's nondiscrimination regulations provide that Offices of Civil Rights will attempt to resolve complaints informally whenever possible. 49 C.F.R. § 21.11(d); 40 C.F.R. § 7.120(d)(2). Accordingly, DOT and EPA are willing to discuss, at any point during the process, offers to informally resolve the complaint, and may, to the extent appropriate, offer alternative dispute resolution (ADR) as described at <http://www.epa.gov/ocr/frequently-asked-questions-about-use-alternative-dispute-resolution-resolving-title-vi>. We will be contacting both you and representatives of the complainants in the future to discuss potential interest in pursuing ADR, as well as your interest in entering into informal resolution discussions.

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 49 C.F.R. § 21.11(e); *see also* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with DOT and/or EPA. Any questions or concerns that you have regarding the investigative process and your rights can be discussed with the investigators.

Please do not hesitate to contact Ryan Fitzpatrick, Lead Civil Rights Analyst in DOT's Departmental Office of Civil Rights, or Brittany Martinez, Case Manager in EPA's Office of Civil Rights, with any questions about the investigation. Mr. Fitzpatrick can be reached at (202) 366-1979, or ryan.fitzpatrick@dot.gov. Ms. Martinez can be reached at (202) 564-0727, or martinez.brittany@epa.gov.

Sincerely,



Yvette Rivera
Associate Director
Department Office of Civil Rights, DOT



Lilian S. Dorka
Deputy Director, Interim Director
Office of Civil Rights, EPA



Rosanne Goodwill
Director
Office of Civil Rights, PHMSA



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation



In Reply Refer To:

DOT# 2016-0361

EPA File Nos. 28R-16-R3,
29R-16-R3, and 30R-16-R3

October 6, 2016

Neil Gormley
Carter Hall
Earthjustice
1625 Massachusetts Ave, NW
Suite 702
Washington, DC 20036

Christine Ernst
Earthjustice
48 Wall Street
19th Floor
New York, NY 10005

Re: **Alternative Dispute Resolution**

Dear Messrs. Gormley and Hall and Ms. Ernst:

As you aware, on September 23, 2016, Earthjustice, on behalf of the Brandywine TB Coalition and Patuxent Riverkeeper, and the Maryland Public Service Commission (PSC), the Maryland Department of the Environment (MDE), and the Maryland Department of Natural Resources (MDNR) (collectively, "recipients") agreed to engage in Alternative Dispute Resolution (ADR). As a result, the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR) and the U.S. Department of Transportation (DOT), Department Office of Civil Rights (DOCR) with the Pipeline and Hazardous Materials Safety Administration (PHMSA) suspended their investigation of the subject complaint for the duration of the ADR process. OCR, DOCR, and PHMSA will resume their investigation if the parties do not reach resolution through ADR. More information about EPA's ADR process can be found at <https://www.epa.gov/ocr/frequently-asked-questions-about-use-alternative-dispute-resolution-resolving-title-vi>.

If you have any questions, please do not hesitate to contact Ryan Fitzpatrick, Lead Civil Rights Analyst in DOT's Departmental Office of Civil Rights, or Brittany Martinez, Case Manager in EPA's Office of Civil Rights, with any questions about the investigation. Mr. Fitzpatrick can be reached at (202) 366-1979, or ryan.fitzpatrick@dot.gov. Ms. Martinez can be reached at (202) 564-0727, or martinez.brittany@epa.gov.

Sincerely,



Yvette Rivera
Associate Director
Department Office of Civil Rights
U.S. Department of Transportation



Rosanne Goodwill
Director
Office of Civil Rights
Pipeline and Hazardous Materials Safety Administration



Lilian S. Dorka
Acting Director
Office of Civil Rights
U.S. Environmental Protection Agency



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation



In Reply Refer To:

DOT# 2016-0361

EPA File Nos. 30R-16-R3

October 6, 2016

Mark J. Belton
Secretary
Maryland Department of Natural Resources
580 Taylor Avenue
Annapolis, MD 21401

Re: **Alternative Dispute Resolution**

Dear Secretary Belton:

As you aware, on September 23, 2016, the Maryland Public Service Commission (PSC), the Maryland Department of the Environment (MDE), the Maryland Department of Natural Resources (MDNR) (collectively, "recipients") and Earthjustice, on behalf of the Brandywine TB Coalition and Patuxent Riverkeeper, agreed to engage in Alternative Dispute Resolution (ADR). As a result, the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR) and the U.S. Department of Transportation (DOT), Department Office of Civil Rights (DOCR) with the Pipeline and Hazardous Materials Safety Administration (PHMSA) suspended their investigation of the subject complaint for the duration of the ADR process. OCR, DOCR, and PHMSA will resume their investigation if the parties do not reach resolution through ADR. More information about EPA's ADR process can be found at <https://www.epa.gov/ocr/frequently-asked-questions-about-use-alternative-dispute-resolution-resolving-title-vi>.

If you have any questions, please do not hesitate to contact Ryan Fitzpatrick, Lead Civil Rights Analyst in DOT's Departmental Office of Civil Rights, or Brittany Martinez, Case Manager in EPA's Office of Civil Rights, with any questions about the investigation. Mr. Fitzpatrick can be reached at (202) 366-1979, or ryan.fitzpatrick@dot.gov. Ms. Martinez can be reached at (202) 564-0727, or martinez.brittany@epa.gov.

Sincerely,



Yvette Rivera
Associate Director
Department Office of Civil Rights
U.S. Department of Transportation



Rosanne Goodwill
Director
Office of Civil Rights
Pipeline and Hazardous Materials Safety Administration



Lilian S. Dorka
Acting Director
Office of Civil Rights
U.S. Environmental Protection Agency



**U.S. Department of
Transportation**

Pipeline and Hazardous
Materials Safety
Administration



**United States
Environmental Protection Agency**

External Civil Rights Compliance Office
Office of General Counsel

January 30, 2019

Return Receipt Requested

Certified Mail# (b) (6) Privacy, (b) (7)(C) Enforcement Privacy

In Reply Refer To:

DOT# 2016-0361
EPA File Nos. 28R-16-R3,
29R-16-R3, and 30R-16-R3

Kamita Gray, President
TB Southern Region Neighborhood Coalition
8787 Branch Avenue, Suite 17
Clinton, MD 20735

Dear Ms. Gray:

This letter is to inform you that the U.S. Department of Transportation (DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is resolving this complaint based on the enclosed Informal Resolution Agreement (Agreement) entered into between DOT and the Maryland Public Service Commission (PSC) and entered into between EPA and the Maryland Department of Environment (MDE) and the Maryland Department of Natural Resources (MDNR). On June 14, 2016, DOT and EPA accepted Complaint No. DOT #2016-0361 and EPA Complaint nos. 28R-16-R3, 29R-16-R3, and 30R-16-R3, which alleged violations of Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, including Title VI regulations administered by DOT (49 Code of Federal Regulations, Part 21) and EPA (40 Code of Federal Regulations, Parts 5 and 7), respectively. Specifically, the issues accepted for investigation were:

1. Whether the process and decision to issue a Certificate of Public Convenience and Necessity (CPCN) to Mattawoman Energy, LLC for the construction of a natural gas-fired power plant in Brandywine, Maryland discriminated on the basis of race, color, or national origin, in violation of Title VI; and
2. Whether the public engagement process prior to the decision to issue a CPCN discriminated on the basis of race, color, or national origin, in violation of Title VI.

During the course of DOT and EPA's investigation, PSC, MDE, and MDNR agreed to enter into an Informal Resolution Agreement in order to resolve this complaint. The enclosed Agreement is entered into by the PSC with the DOT and by MDE and MDNR with EPA pursuant to the authority granted to DOT and the EPA under the federal nondiscrimination laws, including Title

VI of the Civil Rights Act of 1964, and DOT regulation found at 49 C.F.R., Part 21 and EPA regulation at 40 C.F.R. Parts 5 and 7, respectively. It resolves complaint numbers: DOT #2016-0361; and EPA Complaint nos. 28R-16-R3, 29R-16-R3, and 30R-16-R3 and additional concerns identified by DOT and EPA. It is understood that the Agreement does not constitute an admission by PSC or a finding by DOT of violations of 40 C.F.R., Part 21 or an admission by MDE and MDNR or a finding by EPA of violations of 40 C.F.R. Parts 5 and 7.

The enclosed Agreement does not affect PSC, MDE, and MDNR's continuing responsibility under Title VI or other federal non-discrimination laws, DOT's regulation at 40 C.F.R. Part 21, and EPA's regulation at 40 C.F.R. Parts 5 and 7, nor does it affect DOT and EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement. This letter sets forth PHMSA's and ECRCO's disposition of the complaint. This letter is not a formal statement of PHMSA's or ECRCO's policy and should not be relied upon, cited, or construed as such.

DOT is committed to working with PSC and EPA is committed to working with MDE and MDNR as they implement the provisions of the Agreement. If you have any questions regarding the Agreement between PHMSA and PSC, please feel free to contact Rosanne Goodwill at (202) 366-6580, by e-mail at rosanne.goodwill@dot.gov, or U.S. mail at Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., (PH-20, E25-340), Washington D.C. 20590. If you have any questions regarding the Agreement between EPA and MDE or EPA and MDNR, please contact Lilian Dorka at (202) 564-9649, by e-mail at dorka.lilian@epa.gov, or U.S. mail at U.S. EPA, Office of General Counsel, External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,



Rosanne Goodwill, Director
Office of Civil Rights
Pipeline and Hazardous Materials
Safety Administration
U.S. Department of Transportation



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency

Enclosure

Cc:

Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office
U.S. EPA Office of General Counsel

Cecil Rodriques
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 3



**U.S. Department of
Transportation**

Pipeline and Hazardous
Materials Safety
Administration



**United States
Environmental Protection Agency**

External Civil Rights Compliance Office
Office of General Counsel

**INFORMAL RESOLUTION AGREEMENT BETWEEN THE U.S. DEPARTMENT OF
TRANSPORTATION PIPELINE AND HAZARDOUS MATERIALS SAFETY
ADMINISTRATION AND THE MARYLAND PUBLIC SERVICE COMMISSION; AND,
THE U.S. ENVIRONMENTAL PROTECTION AGENCY, AND THE MARYLAND
DEPARTMENT OF THE ENVIRONMENT, AND THE MARYLAND DEPARTMENT OF
NATURAL RESOURCES.**

The Informal Resolution Agreement between the U.S. Department of Transportation ("DOT") Pipeline and Hazardous Materials Safety Administration ("PHMSA") and the Maryland Public Service Commission ("PSC"), a recipient of PHMSA's federal financial assistance, and the U.S. Environmental Protection Agency ("EPA"), and the Maryland Department of the Environment ("MDE"), a recipient of EPA's federal financial assistance, and the U.S. Environmental Protection Agency and the Maryland Department of Natural Resources ("MDNR"), a recipient of EPA's federal financial assistance sets forth the terms of the mutual resolution of DOT/PHMSA's and EPA's investigation into the recipient agencies' permitting of the Mattawoman power plant in Brandywine, Maryland, pursuant to DOT's regulations at 49 C.F.R. Part 21 and EPA's regulations at 40 C.F.R. Part 7, implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 ("Title VI").

I. BACKGROUND AND PURPOSE

- A. Title VI and the federal agencies' implementing regulations prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. Each recipient agency is a recipient of federal financial assistance from DOT/PHMSA or EPA and is subject to the provisions of Title VI and either DOT's or EPA's implementing regulations.
- B. On June 14, 2016, DOT's Pipeline and Hazardous Materials Safety Administration Office of Civil Rights ("OCR"), with DOT's Departmental Office of Civil Rights ("DOCR"), jointly accepted a complaint with EPA's External Civil Rights Compliance Office ("ECRCO") that alleged discrimination based on race, color and national origin in violation of Title VI. In response to the complaint, DOCR/OCR and ECRCO began an investigation of the following issues:
 - (1) Whether the process and decision to issue a Certificate of Public Convenience and Necessity ("CPCN") to Mattawoman Energy, LLC, for the construction of a natural

gas-fired power plant in Brandywine, Maryland discriminated on the basis of race, color, or national origin, in violation of Title VI; and

- (2) Whether the public engagement process prior to the decision to issue a CPCN discriminated on the basis of race, color, or national origin, in violation of Title VI.
- C. During the course of the federal agencies' investigation, the recipient agencies agreed to enter into an Informal Resolution Agreement ("Agreement") in order to resolve this complaint.
- D. This Agreement is entered into voluntarily by the recipient agencies jointly, and by PHMSA's OCR and EPA's ECRCO.
- E. It is understood that this Agreement does not constitute an admission by the recipient agencies of a violation of, or a finding of compliance or noncompliance by PHMSA and/or EPA with, applicable federal non-discrimination laws and regulations.
- F. It is understood that PHMSA and EPA will cease investigation of DOT Complaint #2016-0361 and EPA complaints 28R-16-R3, 29R-16-R3, and 30R-16-R3 upon the signing of this Agreement and will provide technical assistance to support the recipient agencies in the implementation of the commitments contained herein.
- G. The PSC, MDE, and DNR agree to fully implement their specific responsibilities under the corresponding sections of this Agreement and the recipient agencies understand that a failure to satisfy any term in this agreement may result in the EPA and PHMSA re-opening an investigation.¹
- H. The recipient agencies are committed to carrying out their responsibilities in a nondiscriminatory manner, consistent with the requirements of Title VI and the other federal non-discrimination laws and regulations enforced by PHMSA and EPA. The activities detailed in this Agreement, which the recipient agencies have voluntarily agreed to undertake and implement, are in furtherance of this commitment.

II. APPLICABILITY

The federal agencies assert jurisdiction over this matter under their Title VI regulations. Title VI provides that "no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. §§ 2000d et seq.

The federal agencies represent that they have authority under their Title VI regulations to initiate an investigation in this matter to determine the recipient agencies'

¹ EPA Complaint Number 28R-16-R3 will close upon the signing of this Agreement, as PSC is not a recipient of EPA financial assistance.

compliance with Title VI, to issue findings, and where appropriate, to negotiate and secure voluntary compliance. 49 C.F.R. Part 21.11; 40 C.F.R. Part 7.120.

III. DEFINITIONS

- **Affected Communities** – refers to the residential individuals, organizations and other entities located within a one (1)-mile radius of the proposed facility fence line for an urban area, as defined by the United States Census Bureau, and within a three (3)-mile radius of the proposed facility fence line for a rural area, as defined by the Census Bureau.
- **Qualifying Generating Station** – refers to a proposed fossil fuel generation facility over 70 megawatts (MW) in nameplate capacity that is subject to the CPCN requirements under COMAR 20.79.01 et seq.

Subpart A

INFORMAL RESOLUTION AGREEMENT
between the
MARYLAND PUBLIC SERVICE COMMISSION,
and the
UNITED STATES DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
DOT Complaint Number 2016-0361

I. SPECIFIC COMMITMENTS FROM THE PSC

A. Community Outreach and Public Participation

1. PSC is committed to providing an opportunity for meaningful and full public participation by communities affected by a CPCN application consistent with Title VI and other applicable non-discrimination authorities. This includes providing meaningful access to persons with limited English proficiency ("LEP") and those with disabilities, as described in Section D. below.
2. CPCN Pre-Application Process. Within six (6) months of the signing of this agreement, PSC will submit to its formal rulemaking process a proposed rule that modifies the CPCN application requirements under Code of Maryland Regulations (COMAR) 20.79.01 to include and implement a pre-application process for Qualifying Generating Stations, which shall include the following requirements:
 - a. Notice to the Maryland Department of Natural Resources Power Plant Research Program ("PPRP"). The prospective applicant shall notify PPRP in writing of the applicant's intent to file a CPCN application to construct a Qualifying Generating Station and provide PPRP with information (e.g., type, source, location) on the proposed generating station no less than 90 days prior to the filing of the application.
 - b. Community Engagement. The prospective applicant shall meaningfully offer to engage the participation of the Affected Communities for the purpose of educating the Affected Communities concerning the project and soliciting their feedback. The prospective applicant shall at minimum:
 - i. Designate a Community Liaison Officer who will serve as the prospective applicant's point of contact for community inquiries about the application;
 - ii. Identify actual community members and community organizations within the Affected Communities (as the term is defined in Section III.) and provide notification of the project

and any public meeting invitation on the subject to the community members and organizations consistent with Section A(3) below;

iii. Hold a minimum of one (1) public meeting within the county or municipal corporation in which any portion of the construction of the Qualifying Generating Station is proposed to be located, in accordance with the following requirements:

- a. The public meeting must be scheduled at least 60 days before the filing of a CPCN application;
- b. In addition to the notification requirements in Section A(3), the public meeting notice must be submitted to the governing body, and if applicable the executive, of each county or municipal corporation of the proposed location of the generating station; and
- c. The prospective applicant must provide notification of the public meeting(s) by:
 1. Placing an invitation on the applicant's website, if any, or on the applicant's parent corporation's website;
 2. Placing an invitation on at least two types of social media platforms; and
 3. Publishing an advertisement in a newspaper of general circulation in the county or municipal corporation in which the proposed Qualifying Generating Station will be located.

iv. The prospective applicant shall prepare a Public Engagement and Participation Certification Form for New Applications, which shall describe the applicant's efforts to provide notice to and engage the Affected Community and shall include a summary discussion of what, if any, actions the applicant has agreed to take to address public concern(s) raised at the public meeting.

c. Environmental Justice Screen.² The prospective applicant shall use the U.S. EPA EJSCREEN environmental justice screening tool to identify Affected Communities that may be subject to additional impacts from a

² See Purpose and Uses of EJSCREEN (<https://www.epa.gov/ejscreen/purposes-and-uses-ejscreen>), EJSCREEN Environmental Justice Mapping and Screening Tool EJSCREEN Technical Documentation August 2017 (https://www.epa.gov/sites/production/files/2017-09/documents/2017_ejscreen_technical_document.pdf).

proposed Qualifying Generating Station. The numerical thresholds for identifying sensitive areas susceptible to disparate, adverse impacts as a result of permitting certain industrial facilities shall be where the U.S. EPA EJSCREEN demographic index is at or more than the 80th percentile as compared to the state of Maryland for any single census block group within a three-mile circular buffer centered at the GIS coordinates of the proposed Qualifying Generating Station.³ The demographic index is the average of the percentage of the population that is minority and the percentage of the population that is low income, which is hereby defined as a household income less than or equal to twice, or 200 percent of, the federal "poverty level."

3. CPCN Notification Improvements. Within six (6) months of the signing of this agreement, PSC will submit to the formal rulemaking process a proposed modification to the rules governing notification of a filed CPCN application under COMAR 20.79.02 to include the following:
 - a. For fossil fuel generation facilities subject to the CPCN requirement, including those for which a waiver has been denied, the applicant shall post at minimum one large sign at the site of the proposed facility that is visible from the street(s), subject to applicable local restrictions and/or regulations.
 - b. For a Qualifying Generating Station, the applicant shall also send a letter by postal mail to all residential and business addresses within a one (1)-mile radius of the proposed facility site for an urban area, and within a three (3)-mile radius of the proposed facility site for a rural area. The letter notification shall include:
 - i. A fact sheet on the filed application, including the case number, the applicant's designated Community Liaison Officer (as described above) and other relevant information;
 - ii. The prehearing conference date;
 - iii. The deadline for filing petitions to intervene; and

³ See <https://www.epa.gov/ejscreen/frequent-questions-about-ejscreen#q5>. See https://www.epa.gov/sites/production/files/2017-09/documents/2017_ejscreen_technical_document.pdf, p. 26, for what a "percentile" means:

A percentile in EJSCREEN tells us roughly what percent of the US population lives in a block group that has a lower value (or in some cases, a tied value). This means that 100 minus the percentile tells us roughly what percent of the US population has a higher value. This is generally a reasonable interpretation because for most indicators there are not many exact ties between places and not many places with missing data. * * * All percentiles in EJSCREEN are population percentiles, meaning they describe the distribution of block group indicator scores across the population. Note that a population percentile may be slightly different than the unweighted percentile (the percent of block groups, not people, with lower or tied values), because not all block groups have the same population size. In practice they are very similar because very few block groups diverge very much from the average in population size.

- iv. A fact sheet concerning the CPCN process.
- c. The applicant shall file with the PSC at least one picture of each posted sign in accordance with Section A.3(a) and, where applicable, a signed certification of the notification mailings in accordance with subsection 3(b), along with a complete list of mailing recipient names and addresses.
- 4. If any formal rulemaking conducted pursuant to Paragraphs I.A.2. and I.A.3., above, results in any amendments to provisions of COMAR which are a part of the Maryland State Implementation Plan ("SIP"), the PSC will coordinate with MDE to ensure that such amended COMAR provisions are submitted to EPA for approval into the Maryland SIP.
- 5. The PSC will agree to review EPA's Public Participation Guidance found at 71 FR 14207, 14210 (March 21, 2006) which offers important information regarding successful public engagement. PHMSA will also provide appropriate technical assistance.

B. Organization

- 1. Within three (3) months of the signing of this agreement, PSC will provide a description of the CPCN process on its website and provide links to additional informational resources. PHMSA will review the description of the CPCN process on the website and provide any comments within 60 days.
- 2. Within six (6) months of the signing of this agreement, PSC shall also propose to modify COMAR 20.79.02 and 20.79.03 to require the applicant to include with its CPCN application:
 - a. The identity and contact information for the applicant's designated Community Liaison Officer, as described in Section A.2(b)(i);
 - b. If applicable, a copy of the applicant's U.S. EPA EJSCREEN report, which the applicant shall reference and address in the application;
 - c. If applicable, a completed and signed Public Engagement and Participation Certification Form. The Certification Form shall include any supporting documentation, including but not limited to any express terms of agreement reached between the applicant and the Affected Community (subject to redaction of any confidential information);
 - d. Any supporting documentation identifying zoning approvals by the local government/local environmental review board/district, where available.
- 3. Within three (3) months of the signing of this agreement, PSC will adopt a formal Title VI policy of nondiscrimination, and sign (See Section D. below)

and comply with its obligations under the Title VI assurances. PHMSA will review the formal Title VI policy of nondiscrimination within 60 days of receipt.

C. Training

1. Within one (1) year of the signing of this agreement, PSC will accept organization-wide training from PHMSA on compliance with Title VI and other non-discrimination authorities for its Commissioners, Public Utility Law Judges, Office of General Counsel, Office of Staff Counsel, Office of External Relations, Transportation Division, and all Division directors and assistant directors. Training should be provided within one year of the effectuation of this agreement. Within 30 days of completion of the training documentation will be submitted to PHMSA.
2. PSC will accept the provision of technical assistance from PHMSA on meaningful public engagement centered around the CPCN process. Training should be provided within one year of the effectuation of this agreement. Within 30 days of completion of the training documentation will be submitted to PHMSA.

D. Non-Discrimination Procedural Safeguards

1. This Agreement recognizes that the PSC is an independent agency that is committed to enforcing the open access and non-discrimination policies of the State of Maryland and as consistent with federal law.
2. Notice of Non-Discrimination. Within three (3) months of the signing of this agreement, PSC will prominently post a Notice of Non-Discrimination in its offices, on its website homepage, and, to the extent practicable, the PSC will include a Notice of Non-Discrimination in general publications that are distributed to the public (e.g., notice for public hearings, entrances to public hearings, public outreach materials such as brochures, notices, fact sheets, or other information on rights and services, as well as in applications or forms to participate in or access to PSC's programs, processes, or activities).
3. Grievance Procedures. Within three (3) months of the signing of this agreement, PSC will prominently publish on-line on its website homepage, and, to the extent practicable, in print, its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and will do so on a continual basis to allow for appropriate, prompt, and impartial handling of those discrimination complaints, which may allow PSC to resolve issues at the lowest level possible.
4. Designation of Non-Discrimination Coordinator. Within six (6) months of the signing of this agreement, PSC will designate a staff member to serve as its non-discrimination coordinator. It is understood that this individual may conduct other duties. PSC will ensure that it has prominently published, in print

and online, the identity of the current non-discrimination coordinator, along with their email address and telephone contact information.

5. Access for Persons with Limited English Proficiency (LEP). Within six (6) months of the signing of this agreement, PSC will develop and implement a LEP Plan to ensure meaningful access for limited-English proficient individuals to PSC's programs and activities.
6. Access for Persons with Disabilities. Within six (6) months of the signing of this agreement, PSC will develop and implement a policy and procedures for providing individuals with disabilities the opportunity for meaningful access and opportunity for full participation in PSC's programs and activities.

II. GENERAL

- A. In consideration of PSC's implementation of commitments and actions described in Section I of this agreement, PHMSA will end its investigation of DOT Complaint Number 2016-0361 and not issue a decision containing findings on the merits of the complaint.
- B. PHMSA will, upon request, provide technical assistance to PSC regarding any of the civil rights obligations previously referenced.
- C. PHMSA will review and provide feedback about any documentation submitted by PSC demonstrating completion of each commitment (e.g., evidence of publication of the designation of the Non-Discrimination Coordinator) and will provide an assessment as to whether the documentation satisfies the commitment.
- D. PSC will report the completion of each commitment identified under Section I consistent with the timeframes in Section I by certified mail to Rosanne Goodwill, Civil Rights Director, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave, SE, (PH-20, E25-340), Washington D.C. 20590, within 30 days of the completion by PSC of each commitment.
- E. PHMSA will monitor the implementation of the commitments in this agreement to ensure they are fully implemented. Once the terms of this agreement are satisfied, PHMSA will issue a letter documenting closure of its monitoring actions in DOT Complaint Number 2016-0361 and closure of the complaint as of the date of that letter.

III. COMPUTATION OF TIME AND NOTICE

- A. As used in this agreement, "day" shall mean a calendar day. In computing any period of time under this agreement, where the last day would fall on a Saturday, Sunday, or holiday (State or Federal), the period shall run until the close of business of the next working day.

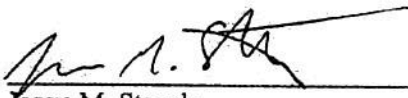
- B. Service of any documents required by this agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
- C. Documents submitted by PSC to PHMSA shall be sent to Civil Rights Director, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave, SE, (PH-20, E25-340), Washington D.C. 20590.
- D. Documents submitted by PHMSA to PSC shall be sent to Jason M. Stanek, Chairman, Maryland Public Service Commission, William Donald Schaefer Tower, 6 St. Paul St., 16th Floor, Baltimore, MD 21202.

IV. EFFECT OF INFORMAL RESOLUTION AGREEMENT

- A. PSC understands that by signing this agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further, PSC understands that during the monitoring of this agreement, if necessary, PHMSA may visit PSC, interview staff, and request such additional reports or data as necessary for PHMSA to determine whether PSC has fulfilled the terms of this agreement and is in compliance with DOT regulations implementing the federal non-discrimination requirements set forth in 49 C.F.R. Part 21, which were at issue in this case.
- B. PSC understands that PHMSA will close its monitoring of this agreement when PHMSA determines that PSC has fully implemented this agreement and that a failure to satisfy any term in this agreement may result in PHMSA re-opening the investigation.
- C. If either Party desires to modify any portion of this agreement because of changed conditions making performance impractical or impossible, or due to material change to PSC's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this agreement shall take effect only upon written agreement of the Chairman of PSC and the Civil Rights Director of PHMSA.
- D. This agreement constitutes the entire agreement between PSC and PHMSA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this agreement, except as specifically agreed to by PSC and PHMSA in accordance with the provisions of Section IV. Paragraph C. above.

- E. This agreement does not affect PSC's continuing responsibility to comply with Title VI or other federal non-discrimination laws and DOT's regulations at 49 C.F.R. Part 21, nor does it affect PHMSA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this agreement.
- F. The effective date of this agreement is the date by which both Parties have signed the agreement. This agreement may be signed in counterparts. The Chairman, in his capacity as an official of PSC, has the authority to enter into this agreement for purposes of carrying out the activities listed in these paragraphs. The PHMSA Civil Rights Director has the authority to enter into this agreement.

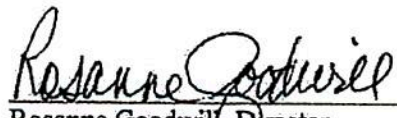
On behalf of the Maryland Public Service Commission



Jason M. Stanek
Chairman

1/28/19
(Date)

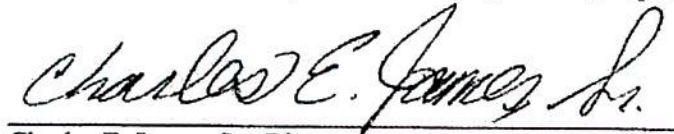
On behalf of the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration,



Rosanne Goodwill, Director
Civil Rights Office

9-27-18
(Date)

On behalf of the U.S. Department of Transportation, Departmental Office of Civil Rights,



Charles E. James, Sr., Director
Departmental Office of Civil Rights

9-27-2018
(Date)

Subpart B

INFORMAL RESOLUTION AGREEMENT
between the
MARYLAND DEPARTMENT OF THE ENVIRONMENT,
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA Complaint Number 29R-16-R3

I. SPECIFIC MDE COMMITMENTS

A. These commitments apply to a Qualifying Generating Station.

1. MDE will make air quality information publicly available as part of its review of a new CPCN application for any Qualifying Generating Station. The information will include:
 - A summary of the sampling data from MDE's air monitoring station(s) located closest to the site of a proposed electric generating unit.
 - A comparison between the sampling data and the applicable national ambient air quality standards (NAAQS) (40 C.F.R. Part 70).
 - A description of how MDE determines whether the proposed electric generating unit would not cause a violation of any NAAQS for which the State is in attainment and how the proposed project meets applicable Clean Air Act requirements in areas for which the State is not in attainment.
 - A description of any pollution control devices proposed to be installed and how they meet state or federal requirements with respect to controlling emissions of criteria air pollutants.
2. MDE will identify a community resource officer to participate at each CPCN Applicant community educational and outreach meeting associated with the receipt of a new CPCN application for a Qualifying Generating Station. At each community education and outreach meeting, MDE will:
 - provide a description of their regulatory authority;
 - provide a description of the required environmental assessments associated with the CPCN; and
 - provide a description of the environmental permitting requirements associated with the CPCN.
3. MDE's community resource officer will work with Affected Communities to evaluate any "citizen science" monitoring undertaken or proposed to be undertaken by communities or by others on the communities' behalf. MDE will provide a written response to the individual submissions which describe MDE's determinations regarding its information review.

4. In accordance with Subpart A, Paragraph I.A.4., MDE will submit to EPA for approval as an amendment to the Maryland State Implementation Plan any changes to COMAR which are the result of PSC formal rulemaking pursuant to Subpart A., Paragraphs I.A. 2 and I.A.3.

B. Training

1. MDE will accept the provision of organization-wide training from EPA on compliance with Title VI and other non-discrimination authorities. Training should be provided within one year of the effectuation of this agreement.
2. MDE will accept the provision of technical assistance from EPA on meaningful public engagement with regard to the CPCN process, including the creation of Public Engagement Plans (PEPs). Training should be provided within one year of the effectuation of this agreement.

C. Non-Discrimination Procedural Safeguards

1. This Agreement recognizes that MDE has an affirmative obligation to not only eliminate discrimination in their organizational processes but to also proactively prevent discrimination, including any that may arise from the CPCN process.
2. Notice of Non-Discrimination: Within three (3) months of the signing of this Agreement, MDE will prominently post its Notice of Non-Discrimination on its website homepage, in general publications that are distributed to the public (e.g., public outreach materials such as brochures, notices, fact sheets, or other information on rights and services, as well as in applications or forms to participate in or access to MDE's programs, processes, or activities), and in MDE's offices.
3. Grievance Procedures: Within three (3) months of the signing of this Agreement, MDE will prominently publish in print and on-line its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and will do so on a continual basis to allow for appropriate, prompt, and impartial handling of those discrimination complaints, which may allow MDE to resolve issues at the lowest level possible.
4. Designation of Non-Discrimination Coordinator: Within three (3) months of the signing of this Agreement, MDE will designate a non-discrimination coordinator staff position. If necessary, this position can also conduct other duties. MDE will ensure that it has prominently published, in print and online, the identity of the current non-discrimination coordinator, along with his/her email address and telephone contact information.

5. Access for Persons with Limited English Proficiency (LEP): Within six (6) months of the signing of this Agreement, MDE will develop and implement a LEP Plan to ensure meaningful access for limited-English proficient individuals to MDE's programs and activities.
6. Access for Persons with Disabilities: Within six (6) months of the signing of this Agreement, MDE will develop and implement a policy and procedures for providing individuals with disabilities the opportunity for meaningful access and opportunity for full participation in MDE's programs and activities.

II. GENERAL

- A. In consideration of MDE's implementation of commitments and actions described in Section I of this Agreement, EPA will end its investigation of EPA Complaint Number 29R-16-R3 and not issue a decision containing findings on the merits of the Complaint.
- B. EPA will, upon request, provide technical assistance to MDE regarding any of the civil rights obligations previously referenced.
- C. EPA will review and, within 30 days provide feedback, which will include an assessment as to whether documentation submitted to EPA by MDE satisfies the particular commitment for which MDE is making the submittal, to MDE in response to any documentation submitted by MDE demonstrating completion of each commitment (*e.g.*, evidence of publication of the designation of the Non-Discrimination Coordinator).
- D. MDE will report the completion of each commitment identified under Subpart B, Section I consistent with the timeframes set forth in Subpart B, Section I by certified mail to Lilian Dorka, Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within thirty (30) days of the completion by MDE of each commitment.
- E. EPA will monitor the implementation of the commitments in this Agreement to ensure they are fully implemented. Once the terms of this Agreement are satisfied, EPA will issue a letter documenting closure of its monitoring actions in Complaint Number 29R-16-R3 and closure of the complaint as of the date of that letter.

III. COMPUTATION OF TIME AND NOTICE

- A. As used in this Agreement, "day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or holiday (State or Federal), the period shall run until the close of business of the next working day.
- B. Submission of any documents required by Section II. D. of this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
- C. Documents submitted by MDE to EPA shall be sent to Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.
- D. Documents submitted by EPA to MDE shall be sent to Ben Grumbles, Secretary, (or any successor) Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, MD 21230.

IV. EFFECT OF INFORMAL RESOLUTION AGREEMENT

- A. MDE understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, MDE understands that during the monitoring of this Agreement, if necessary, EPA may visit MDE, interview staff, and request such additional reports or data as necessary for EPA to determine whether MDE has fulfilled the terms of this Agreement and is in compliance with EPA regulations implementing the federal non-discrimination requirements in 40 C.F.R. Part 7.
- B. MDE understands that EPA will close its monitoring of this Agreement when EPA determines that MDE has fully implemented this Agreement and that a failure to satisfy any term in this Agreement may result in EPA re-opening the investigation.
- C. If either MDE or EPA desire to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to MDE's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written consent of the Secretary of MDE and the ECRCO Director of EPA.

- D. This Agreement constitutes the entire Agreement between MDE and EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this Agreement, except as specifically agreed to by MDE and EPA in accordance with the provisions of Subpart B, Section IV, Paragraph C above.
- E. This Agreement does not affect MDE's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulations at 40 C.F.R. Part 7, including § 7.85, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement. The Agreement does not affect MDE's right to respond to any such EPA investigation or any defenses to such.
- F. The effective date of this Agreement is the date by which both MDE and EPA have signed the Agreement. This Agreement may be signed in counterparts. The Secretary, in his capacity as an official of MDE, has the authority to enter into this Agreement for the purpose of carrying out MDE's commitments as set forth in this Agreement. The Director of ECRCO has the authority to enter into this Agreement.

On behalf of the Maryland Department of the Environment



Ben Grumbles
Secretary

1-21-19
(Date)

On behalf of the U.S. Environmental Protection Agency,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

9-27-2018
(Date)

Subpart C

INFORMAL RESOLUTION AGREEMENT
between the
MARYLAND DEPARTMENT OF NATURAL RESOURCES
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA Complaint Number 30R-16-R3

I. SPECIFIC COMMITMENTS FROM MDNR

A. Community Outreach and Public Participation

1. Within three (3) months of the signing of this agreement, MDNR shall adopt a policy or procedure that, upon receiving notice of a CPCN application for a Qualifying Generating Station, MDNR's Power Plant Research Program will identify a community resource officer who will serve as a point of contact for members of the public interested in the application. The community resource officer can participate at each CPCN Applicant community educational and outreach meeting associated with the application and may, but need not, be the project manager for the application at issue.

B. Non-Discrimination Procedural Safeguards

1. MDNR is committed to eliminate discrimination in its organizational processes and to proactively prevent discrimination, including any that may arise from its role in the CPCN process.
2. Notice of Non-Discrimination: Within three (3) months of the signing of this agreement, MDNR will prominently post its Notice of Non-Discrimination in its offices, on its website homepage, and, to the extent practicable, in general publications that are distributed to the public (e.g., public outreach materials such as brochures, notices, fact sheets, or other information on rights and services, as well as in applications or forms to participate in or access to MDNR's programs, processes, or activities).
3. Grievance Procedures: Within three (3) months of the signing of this agreement, MDNR will prominently publish in print and on-line its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and will do so on a continual basis to allow for appropriate, prompt, and impartial handling of those discrimination complaints, which may allow MDNR to resolve issues at the lowest level possible.
4. Designation of Non-Discrimination Coordinator: MDNR has designated and will maintain a designated non-discrimination coordinator. The employee holding this position may also have other job functions and duties. MDNR will ensure that it has prominently published, in print and online, the identity of the

current non-discrimination coordinator, along with his/her email address and telephone contact information.

5. Access for Persons with Limited English Proficiency (LEP): In January 2011, MDNR adopted an internal policy for Access for Persons with Limited English Proficiency. MDNR will review and update the LEP Plan to ensure it continues to provide meaningful access for limited-English proficient individuals to MDNR's programs and activities.
6. Access for Persons with Disabilities: MDNR maintains an ADA Transition Plan that is updated every 3 years. MDNR will implement the FY 19-21 ADA Transition Plan to ensure the Department is providing individuals with disabilities the opportunity for meaningful access and opportunity for full participation in MDNR's programs and activities.

II. GENERAL

- A. In consideration of MDNR's implementation of commitments and actions described in Section I of this Agreement, EPA will end its investigation of Complaint Number 30R-16-R3 and not issue a decision containing findings on the merits of the Complaint.
- B. EPA will, upon request, provide technical assistance to MDNR regarding any of the civil rights obligations previously referenced.
- C. EPA will review and provide feedback about any documentation submitted by MDNR demonstrating completion of each and will provide an assessment as to whether the documentation satisfies the commitment.
- D. MDNR will report the completion of each commitment identified under Section I consistent with the timeframes in Section I by certified mail to Lilian Dorka, Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within 30 days of the completion by MDNR of each commitment.
- E. MDNR has completed the implementation of commitments I.B.4, I.B.5, and I.B.6. EPA will monitor the implementation of the remaining commitments in this Agreement to ensure they are fully implemented. Once the terms of this Agreement are satisfied, EPA will issue a letter documenting closure of its monitoring actions in Complaint Number 30R-16-R3 and closure of the complaint as of the date of that letter.

III. COMPUTATION OF TIME AND NOTICE

- A. As used in this Agreement, "day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or holiday (State or Federal), the period shall run until the close of business of the next working day.
- B. Service of any documents required by this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
- C. Documents submitted by MDNR to EPA shall be sent to Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.
- D. Documents submitted by EPA to MDNR shall be sent to Mark Belton, Secretary, Maryland Department of Natural Resources, Tawes State Office Building, 580 Taylor Ave, Annapolis MD 21401.

IV. EFFECT OF INFORMAL RESOLUTION AGREEMENT

- A. MDNR understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, MDNR understands that during the monitoring of this Agreement, if necessary, EPA may visit MDNR, interview staff, and request such additional reports or data as necessary for EPA to determine whether MDNR has fulfilled the terms of this Agreement and is in compliance with EPA regulations implementing the federal non-discrimination requirements in 40 C.F.R. Part 7, which were at issue in this case.
- B. MDNR understands that EPA will close its monitoring of this Agreement when EPA determines that MDNR has fully implemented this Agreement and that a failure to satisfy any term in this Agreement may result in EPA re-opening the investigation.
- C. If either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to MDNR's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement of the Secretary of MDNR and the ECRCO Director of EPA.
- D. This Agreement constitutes the entire Agreement between MDNR and EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any

commitment or term of this Agreement, except as specifically agreed to by MDNR and EPA in accordance with the provisions of Section IV. Paragraph c above.

- E. This Agreement does not affect MDNR's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulations at 40 C.F.R. Part 7, including § 7.85, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.
- F. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts. The Secretary, in his capacity as an official of MDNR, has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Director of ECRCO has the authority to enter into this Agreement.

On behalf of the Maryland Department of Natural Resources



Mark J. Belton,
Secretary

15 January 2019
(Date)

On behalf of the U.S. Environmental Protection Agency,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

9-24-2018
(Date)



**U.S. Department of
Transportation**

Pipeline and Hazardous
Materials Safety
Administration



**United States
Environmental Protection Agency**

External Civil Rights Compliance Office
Office of General Counsel

January 30, 2019

Return Receipt Requested

Certified Mail#: (b) (6) Privacy

In Reply Refer To:

DOT# 2016-0361
EPA File Nos. 28R-16-R3,
29R-16-R3, and 30R-16-R3

(b) (6) Privacy

Patuxent Riverkeepers
17412 Nottingham Road
Upper Marlboro, MD 20772

Dear (b) (6) Privacy

This letter is to inform you that the U.S. Department of Transportation (DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is resolving this complaint based on the enclosed Informal Resolution Agreement (Agreement) entered into between DOT and the Maryland Public Service Commission (PSC) and entered into between EPA and the Maryland Department of Environment (MDE) and the Maryland Department of Natural Resources (MDNR). On June 14, 2016, DOT and EPA accepted Complaint No. DOT #2016-0361 and EPA Complaint nos. 28R-16-R3, 29R-16-R3, and 30R-16-R3, which alleged violations of Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, including Title VI regulations administered by DOT (49 Code of Federal Regulations, Part 21) and EPA (40 Code of Federal Regulations, Parts 5 and 7), respectively. Specifically, the issues accepted for investigation were:

1. Whether the process and decision to issue a Certificate of Public Convenience and Necessity (CPCN) to Mattawoman Energy, LLC for the construction of a natural gas-fired power plant in Brandywine, Maryland discriminated on the basis of race, color, or national origin, in violation of Title VI; and
2. Whether the public engagement process prior to the decision to issue a CPCN discriminated on the basis of race, color, or national origin, in violation of Title VI.

During the course of DOT and EPA's investigation, PSC, MDE, and MDNR agreed to enter into an Informal Resolution Agreement in order to resolve this complaint. The enclosed Agreement is entered into by the PSC with the DOT and by MDE and MDNR with EPA pursuant to the authority granted to DOT and the EPA under the federal nondiscrimination laws, including Title VI of the Civil Rights Act of 1964, and DOT regulation found at 49 C.F.R., Part 21 and EPA

regulation at 40 C.F.R. Parts 5 and 7, respectively. It resolves complaint numbers: DOT #2016-0361; and EPA Complaint nos. 28R-16-R3, 29R-16-R3, and 30R-16-R3 and additional concerns identified by DOT and EPA. It is understood that the Agreement does not constitute an admission by PSC or a finding by DOT of violations of 40 C.F.R., Part 21 or an admission by MDE and MDNR or a finding by EPA of violations of 40 C.F.R. Parts 5 and 7.

The enclosed Agreement does not affect PSC, MDE, and MDNR's continuing responsibility under Title VI or other federal non-discrimination laws, DOT's regulation at 40 C.F.R. Part 21, and EPA's regulation at 40 C.F.R. Parts 5 and 7, nor does it affect DOT and EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement. This letter sets forth PHMSA's and ECRCO's disposition of the complaint. This letter is not a formal statement of PHMSA's or ECRCO's policy and should not be relied upon, cited, or construed as such.

DOT is committed to working with PSC and EPA is committed to working with MDE and MDNR as they implement the provisions of the Agreement. If you have any questions regarding the Agreement between PHMSA and PSC, please feel free to contact Rosanne Goodwill at (202) 366-6580, by e-mail at rosanne.goodwill@dot.gov, or U.S. mail at Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., (PH-20, E25-340), Washington D.C. 20590. If you have any questions regarding the Agreement between EPA and MDE or EPA and MDNR, please contact Lilian Dorka at (202) 564-9649, by e-mail at dorka.lilian@epa.gov, or U.S. mail at U.S. EPA, Office of General Counsel, External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,



Rosanne Goodwill, Director
Office of Civil Rights
Pipeline and Hazardous Materials
Safety Administration
U.S. Department of Transportation



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency

Enclosure

Cc:

Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office
U.S. EPA Office of General Counsel

Cecil Rodriques
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 3



**U.S. Department of
Transportation**

Pipeline and Hazardous
Materials Safety
Administration



**United States
Environmental Protection Agency**

External Civil Rights Compliance Office
Office of General Counsel

**INFORMAL RESOLUTION AGREEMENT BETWEEN THE U.S. DEPARTMENT OF
TRANSPORTATION PIPELINE AND HAZARDOUS MATERIALS SAFETY
ADMINISTRATION AND THE MARYLAND PUBLIC SERVICE COMMISSION; AND,
THE U.S. ENVIRONMENTAL PROTECTION AGENCY, AND THE MARYLAND
DEPARTMENT OF THE ENVIRONMENT, AND THE MARYLAND DEPARTMENT OF
NATURAL RESOURCES.**

The Informal Resolution Agreement between the U.S. Department of Transportation ("DOT") Pipeline and Hazardous Materials Safety Administration ("PHMSA") and the Maryland Public Service Commission ("PSC"), a recipient of PHMSA's federal financial assistance, and the U.S. Environmental Protection Agency ("EPA"), and the Maryland Department of the Environment ("MDE"), a recipient of EPA's federal financial assistance, and the U.S. Environmental Protection Agency and the Maryland Department of Natural Resources ("MDNR"), a recipient of EPA's federal financial assistance sets forth the terms of the mutual resolution of DOT/PHMSA's and EPA's investigation into the recipient agencies' permitting of the Mattawoman power plant in Brandywine, Maryland, pursuant to DOT's regulations at 49 C.F.R. Part 21 and EPA's regulations at 40 C.F.R. Part 7, implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 ("Title VI").

I. BACKGROUND AND PURPOSE

- A. Title VI and the federal agencies' implementing regulations prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. Each recipient agency is a recipient of federal financial assistance from DOT/PHMSA or EPA and is subject to the provisions of Title VI and either DOT's or EPA's implementing regulations.
- B. On June 14, 2016, DOT's Pipeline and Hazardous Materials Safety Administration Office of Civil Rights ("OCR"), with DOT's Departmental Office of Civil Rights ("DOCR"), jointly accepted a complaint with EPA's External Civil Rights Compliance Office ("ECRCO") that alleged discrimination based on race, color and national origin in violation of Title VI. In response to the complaint, DOCR/OCR and ECRCO began an investigation of the following issues:
 - (1) Whether the process and decision to issue a Certificate of Public Convenience and Necessity ("CPCN") to Mattawoman Energy, LLC, for the construction of a natural

gas-fired power plant in Brandywine, Maryland discriminated on the basis of race, color, or national origin, in violation of Title VI; and

- (2) Whether the public engagement process prior to the decision to issue a CPCN discriminated on the basis of race, color, or national origin, in violation of Title VI.
- C. During the course of the federal agencies' investigation, the recipient agencies agreed to enter into an Informal Resolution Agreement ("Agreement") in order to resolve this complaint.
- D. This Agreement is entered into voluntarily by the recipient agencies jointly, and by PHMSA's OCR and EPA's ECRCO.
- E. It is understood that this Agreement does not constitute an admission by the recipient agencies of a violation of, or a finding of compliance or noncompliance by PHMSA and/or EPA with, applicable federal non-discrimination laws and regulations.
- F. It is understood that PHMSA and EPA will cease investigation of DOT Complaint #2016-0361 and EPA complaints 28R-16-R3, 29R-16-R3, and 30R-16-R3 upon the signing of this Agreement and will provide technical assistance to support the recipient agencies in the implementation of the commitments contained herein.
- G. The PSC, MDE, and DNR agree to fully implement their specific responsibilities under the corresponding sections of this Agreement and the recipient agencies understand that a failure to satisfy any term in this agreement may result in the EPA and PHMSA re-opening an investigation.¹
- H. The recipient agencies are committed to carrying out their responsibilities in a nondiscriminatory manner, consistent with the requirements of Title VI and the other federal non-discrimination laws and regulations enforced by PHMSA and EPA. The activities detailed in this Agreement, which the recipient agencies have voluntarily agreed to undertake and implement, are in furtherance of this commitment.

II. APPLICABILITY

The federal agencies assert jurisdiction over this matter under their Title VI regulations. Title VI provides that "no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. §§ 2000d et seq.

The federal agencies represent that they have authority under their Title VI regulations to initiate an investigation in this matter to determine the recipient agencies'

¹ EPA Complaint Number 28R-16-R3 will close upon the signing of this Agreement, as PSC is not a recipient of EPA financial assistance.

compliance with Title VI, to issue findings, and where appropriate, to negotiate and secure voluntary compliance. 49 C.F.R. Part 21.11; 40 C.F.R. Part 7.120.

III. DEFINITIONS

- **Affected Communities** – refers to the residential individuals, organizations and other entities located within a one (1)-mile radius of the proposed facility fence line for an urban area, as defined by the United States Census Bureau, and within a three (3)-mile radius of the proposed facility fence line for a rural area, as defined by the Census Bureau.
- **Qualifying Generating Station** – refers to a proposed fossil fuel generation facility over 70 megawatts (MW) in nameplate capacity that is subject to the CPCN requirements under COMAR 20.79.01 et seq.

Subpart A

INFORMAL RESOLUTION AGREEMENT
between the
MARYLAND PUBLIC SERVICE COMMISSION,
and the
UNITED STATES DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
DOT Complaint Number 2016-0361

I. SPECIFIC COMMITMENTS FROM THE PSC

A. Community Outreach and Public Participation

1. PSC is committed to providing an opportunity for meaningful and full public participation by communities affected by a CPCN application consistent with Title VI and other applicable non-discrimination authorities. This includes providing meaningful access to persons with limited English proficiency ("LEP") and those with disabilities, as described in Section D. below.
2. CPCN Pre-Application Process. Within six (6) months of the signing of this agreement, PSC will submit to its formal rulemaking process a proposed rule that modifies the CPCN application requirements under Code of Maryland Regulations (COMAR) 20.79.01 to include and implement a pre-application process for Qualifying Generating Stations, which shall include the following requirements:
 - a. Notice to the Maryland Department of Natural Resources Power Plant Research Program ("PPRP"). The prospective applicant shall notify PPRP in writing of the applicant's intent to file a CPCN application to construct a Qualifying Generating Station and provide PPRP with information (e.g., type, source, location) on the proposed generating station no less than 90 days prior to the filing of the application.
 - b. Community Engagement. The prospective applicant shall meaningfully offer to engage the participation of the Affected Communities for the purpose of educating the Affected Communities concerning the project and soliciting their feedback. The prospective applicant shall at minimum:
 - i. Designate a Community Liaison Officer who will serve as the prospective applicant's point of contact for community inquiries about the application;
 - ii. Identify actual community members and community organizations within the Affected Communities (as the term is defined in Section III.) and provide notification of the project

and any public meeting invitation on the subject to the community members and organizations consistent with Section A(3) below;

iii. Hold a minimum of one (1) public meeting within the county or municipal corporation in which any portion of the construction of the Qualifying Generating Station is proposed to be located, in accordance with the following requirements:

a. The public meeting must be scheduled at least 60 days before the filing of a CPCN application;

b. In addition to the notification requirements in Section A(3), the public meeting notice must be submitted to the governing body, and if applicable the executive, of each county or municipal corporation of the proposed location of the generating station; and

c. The prospective applicant must provide notification of the public meeting(s) by:

1. Placing an invitation on the applicant's website, if any, or on the applicant's parent corporation's website;

2. Placing an invitation on at least two types of social media platforms; and

3. Publishing an advertisement in a newspaper of general circulation in the county or municipal corporation in which the proposed Qualifying Generating Station will be located.

iv. The prospective applicant shall prepare a Public Engagement and Participation Certification Form for New Applications, which shall describe the applicant's efforts to provide notice to and engage the Affected Community and shall include a summary discussion of what, if any, actions the applicant has agreed to take to address public concern(s) raised at the public meeting.

c. Environmental Justice Screen.² The prospective applicant shall use the U.S. EPA EJSCREEN environmental justice screening tool to identify Affected Communities that may be subject to additional impacts from a

² See Purpose and Uses of EJSCREEN (<https://www.epa.gov/ejscreen/purposes-and-uses-ejscreen>), EJSCREEN Environmental Justice Mapping and Screening Tool EJSCREEN Technical Documentation August 2017 (https://www.epa.gov/sites/production/files/2017-09/documents/2017_ejscreen_technical_document.pdf).

proposed Qualifying Generating Station. The numerical thresholds for identifying sensitive areas susceptible to disparate, adverse impacts as a result of permitting certain industrial facilities shall be where the U.S. EPA EJSCREEN demographic index is at or more than the 80th percentile as compared to the state of Maryland for any single census block group within a three-mile circular buffer centered at the GIS coordinates of the proposed Qualifying Generating Station.³ The demographic index is the average of the percentage of the population that is minority and the percentage of the population that is low income, which is hereby defined as a household income less than or equal to twice, or 200 percent of, the federal "poverty level."

3. CPCN Notification Improvements. Within six (6) months of the signing of this agreement, PSC will submit to the formal rulemaking process a proposed modification to the rules governing notification of a filed CPCN application under COMAR 20.79.02 to include the following:
 - a. For fossil fuel generation facilities subject to the CPCN requirement, including those for which a waiver has been denied, the applicant shall post at minimum one large sign at the site of the proposed facility that is visible from the street(s), subject to applicable local restrictions and/or regulations.
 - b. For a Qualifying Generating Station, the applicant shall also send a letter by postal mail to all residential and business addresses within a one (1)-mile radius of the proposed facility site for an urban area, and within a three (3)-mile radius of the proposed facility site for a rural area. The letter notification shall include:
 - i. A fact sheet on the filed application, including the case number, the applicant's designated Community Liaison Officer (as described above) and other relevant information;
 - ii. The prehearing conference date;
 - iii. The deadline for filing petitions to intervene; and

³ See <https://www.epa.gov/ejscreen/frequent-questions-about-ejscreen#q5>. See https://www.epa.gov/sites/production/files/2017-09/documents/2017_ejscreen_technical_document.pdf, p. 26, for what a "percentile" means:

A percentile in EJSCREEN tells us roughly what percent of the US population lives in a block group that has a lower value (or in some cases, a tied value). This means that 100 minus the percentile tells us roughly what percent of the US population has a higher value. This is generally a reasonable interpretation because for most indicators there are not many exact ties between places and not many places with missing data. * * * All percentiles in EJSCREEN are population percentiles, meaning they describe the distribution of block group indicator scores across the population. Note that a population percentile may be slightly different than the unweighted percentile (the percent of block groups, not people, with lower or tied values), because not all block groups have the same population size. In practice they are very similar because very few block groups diverge very much from the average in population size.

- iv. A fact sheet concerning the CPCN process.
- c. The applicant shall file with the PSC at least one picture of each posted sign in accordance with Section A.3(a) and, where applicable, a signed certification of the notification mailings in accordance with subsection 3(b), along with a complete list of mailing recipient names and addresses.
- 4. If any formal rulemaking conducted pursuant to Paragraphs I.A.2. and I.A.3., above, results in any amendments to provisions of COMAR which are a part of the Maryland State Implementation Plan ("SIP"), the PSC will coordinate with MDE to ensure that such amended COMAR provisions are submitted to EPA for approval into the Maryland SIP.
- 5. The PSC will agree to review EPA's Public Participation Guidance found at 71 FR 14207, 14210 (March 21, 2006) which offers important information regarding successful public engagement. PHMSA will also provide appropriate technical assistance.

B. Organization

- 1. Within three (3) months of the signing of this agreement, PSC will provide a description of the CPCN process on its website and provide links to additional informational resources. PHMSA will review the description of the CPCN process on the website and provide any comments within 60 days.
- 2. Within six (6) months of the signing of this agreement, PSC shall also propose to modify COMAR 20.79.02 and 20.79.03 to require the applicant to include with its CPCN application:
 - a. The identity and contact information for the applicant's designated Community Liaison Officer, as described in Section A.2(b)(i);
 - b. If applicable, a copy of the applicant's U.S. EPA EJSCREEN report, which the applicant shall reference and address in the application;
 - c. If applicable, a completed and signed Public Engagement and Participation Certification Form. The Certification Form shall include any supporting documentation, including but not limited to any express terms of agreement reached between the applicant and the Affected Community (subject to redaction of any confidential information);
 - d. Any supporting documentation identifying zoning approvals by the local government/local environmental review board/district, where available.
- 3. Within three (3) months of the signing of this agreement, PSC will adopt a formal Title VI policy of nondiscrimination, and sign (See Section D. below)

and comply with its obligations under the Title VI assurances. PHMSA will review the formal Title VI policy of nondiscrimination within 60 days of receipt.

C. Training

1. Within one (1) year of the signing of this agreement, PSC will accept organization-wide training from PHMSA on compliance with Title VI and other non-discrimination authorities for its Commissioners, Public Utility Law Judges, Office of General Counsel, Office of Staff Counsel, Office of External Relations, Transportation Division, and all Division directors and assistant directors. Training should be provided within one year of the effectuation of this agreement. Within 30 days of completion of the training documentation will be submitted to PHMSA.
2. PSC will accept the provision of technical assistance from PHMSA on meaningful public engagement centered around the CPCN process. Training should be provided within one year of the effectuation of this agreement. Within 30 days of completion of the training documentation will be submitted to PHMSA.

D. Non-Discrimination Procedural Safeguards

1. This Agreement recognizes that the PSC is an independent agency that is committed to enforcing the open access and non-discrimination policies of the State of Maryland and as consistent with federal law.
2. Notice of Non-Discrimination. Within three (3) months of the signing of this agreement, PSC will prominently post a Notice of Non-Discrimination in its offices, on its website homepage, and, to the extent practicable, the PSC will include a Notice of Non-Discrimination in general publications that are distributed to the public (e.g., notice for public hearings, entrances to public hearings, public outreach materials such as brochures, notices, fact sheets, or other information on rights and services, as well as in applications or forms to participate in or access to PSC's programs, processes, or activities).
3. Grievance Procedures. Within three (3) months of the signing of this agreement, PSC will prominently publish on-line on its website homepage, and, to the extent practicable, in print, its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and will do so on a continual basis to allow for appropriate, prompt, and impartial handling of those discrimination complaints, which may allow PSC to resolve issues at the lowest level possible.
4. Designation of Non-Discrimination Coordinator. Within six (6) months of the signing of this agreement, PSC will designate a staff member to serve as its non-discrimination coordinator. It is understood that this individual may conduct other duties. PSC will ensure that it has prominently published, in print

and online, the identity of the current non-discrimination coordinator, along with their email address and telephone contact information.

5. Access for Persons with Limited English Proficiency (LEP). Within six (6) months of the signing of this agreement, PSC will develop and implement a LEP Plan to ensure meaningful access for limited-English proficient individuals to PSC's programs and activities.
6. Access for Persons with Disabilities. Within six (6) months of the signing of this agreement, PSC will develop and implement a policy and procedures for providing individuals with disabilities the opportunity for meaningful access and opportunity for full participation in PSC's programs and activities.

II. GENERAL

- A. In consideration of PSC's implementation of commitments and actions described in Section I of this agreement, PHMSA will end its investigation of DOT Complaint Number 2016-0361 and not issue a decision containing findings on the merits of the complaint.
- B. PHMSA will, upon request, provide technical assistance to PSC regarding any of the civil rights obligations previously referenced.
- C. PHMSA will review and provide feedback about any documentation submitted by PSC demonstrating completion of each commitment (e.g., evidence of publication of the designation of the Non-Discrimination Coordinator) and will provide an assessment as to whether the documentation satisfies the commitment.
- D. PSC will report the completion of each commitment identified under Section I consistent with the timeframes in Section I by certified mail to Rosanne Goodwill, Civil Rights Director, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave, SE, (PH-20, E25-340), Washington D.C. 20590, within 30 days of the completion by PSC of each commitment.
- E. PHMSA will monitor the implementation of the commitments in this agreement to ensure they are fully implemented. Once the terms of this agreement are satisfied, PHMSA will issue a letter documenting closure of its monitoring actions in DOT Complaint Number 2016-0361 and closure of the complaint as of the date of that letter.

III. COMPUTATION OF TIME AND NOTICE

- A. As used in this agreement, "day" shall mean a calendar day. In computing any period of time under this agreement, where the last day would fall on a Saturday, Sunday, or holiday (State or Federal), the period shall run until the close of business of the next working day.

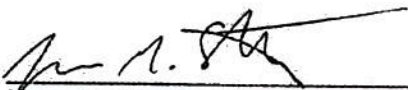
- B. Service of any documents required by this agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
- C. Documents submitted by PSC to PHMSA shall be sent to Civil Rights Director, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave, SE, (PH-20, E25-340), Washington D.C. 20590.
- D. Documents submitted by PHMSA to PSC shall be sent to Jason M. Stanek, Chairman, Maryland Public Service Commission, William Donald Schaefer Tower, 6 St. Paul St., 16th Floor, Baltimore, MD 21202.

IV. EFFECT OF INFORMAL RESOLUTION AGREEMENT

- A. PSC understands that by signing this agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further, PSC understands that during the monitoring of this agreement, if necessary, PHMSA may visit PSC, interview staff, and request such additional reports or data as necessary for PHMSA to determine whether PSC has fulfilled the terms of this agreement and is in compliance with DOT regulations implementing the federal non-discrimination requirements set forth in 49 C.F.R. Part 21, which were at issue in this case.
- B. PSC understands that PHMSA will close its monitoring of this agreement when PHMSA determines that PSC has fully implemented this agreement and that a failure to satisfy any term in this agreement may result in PHMSA re-opening the investigation.
- C. If either Party desires to modify any portion of this agreement because of changed conditions making performance impractical or impossible, or due to material change to PSC's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this agreement shall take effect only upon written agreement of the Chairman of PSC and the Civil Rights Director of PHMSA.
- D. This agreement constitutes the entire agreement between PSC and PHMSA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this agreement, except as specifically agreed to by PSC and PHMSA in accordance with the provisions of Section IV. Paragraph C. above.

- E. This agreement does not affect PSC's continuing responsibility to comply with Title VI or other federal non-discrimination laws and DOT's regulations at 49 C.F.R. Part 21, nor does it affect PHMSA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this agreement.
- F. The effective date of this agreement is the date by which both Parties have signed the agreement. This agreement may be signed in counterparts. The Chairman, in his capacity as an official of PSC, has the authority to enter into this agreement for purposes of carrying out the activities listed in these paragraphs. The PHMSA Civil Rights Director has the authority to enter into this agreement.

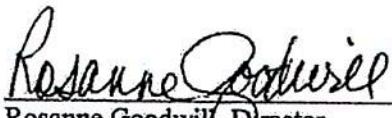
On behalf of the Maryland Public Service Commission



Jason M. Stanek
Chairman

1/28/19
(Date)

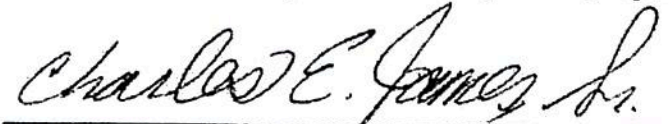
On behalf of the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration,



Rosanne Goodwill, Director
Civil Rights Office

9-27-18
(Date)

On behalf of the U.S. Department of Transportation, Departmental Office of Civil Rights,



Charles E. James, Sr., Director
Departmental Office of Civil Rights

9-27-2018
(Date)

Subpart B

INFORMAL RESOLUTION AGREEMENT
between the
MARYLAND DEPARTMENT OF THE ENVIRONMENT,
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA Complaint Number 29R-16-R3

I. SPECIFIC MDE COMMITMENTS

A. These commitments apply to a Qualifying Generating Station.

1. MDE will make air quality information publicly available as part of its review of a new CPCN application for any Qualifying Generating Station. The information will include:
 - A summary of the sampling data from MDE's air monitoring station(s) located closest to the site of a proposed electric generating unit.
 - A comparison between the sampling data and the applicable national ambient air quality standards (NAAQS) (40 C.F.R. Part 70).
 - A description of how MDE determines whether the proposed electric generating unit would not cause a violation of any NAAQS for which the State is in attainment and how the proposed project meets applicable Clean Air Act requirements in areas for which the State is not in attainment.
 - A description of any pollution control devices proposed to be installed and how they meet state or federal requirements with respect to controlling emissions of criteria air pollutants.
2. MDE will identify a community resource officer to participate at each CPCN Applicant community educational and outreach meeting associated with the receipt of a new CPCN application for a Qualifying Generating Station. At each community education and outreach meeting, MDE will:
 - provide a description of their regulatory authority;
 - provide a description of the required environmental assessments associated with the CPCN; and
 - provide a description of the environmental permitting requirements associated with the CPCN.
3. MDE's community resource officer will work with Affected Communities to evaluate any "citizen science" monitoring undertaken or proposed to be undertaken by communities or by others on the communities' behalf. MDE will provide a written response to the individual submissions which describe MDE's determinations regarding its information review.

4. In accordance with Subpart A, Paragraph I.A.4., MDE will submit to EPA for approval as an amendment to the Maryland State Implementation Plan any changes to COMAR which are the result of PSC formal rulemaking pursuant to Subpart A., Paragraphs I.A. 2 and I.A.3.

B. Training

1. MDE will accept the provision of organization-wide training from EPA on compliance with Title VI and other non-discrimination authorities. Training should be provided within one year of the effectuation of this agreement.
2. MDE will accept the provision of technical assistance from EPA on meaningful public engagement with regard to the CPCN process, including the creation of Public Engagement Plans (PEPs). Training should be provided within one year of the effectuation of this agreement.

C. Non-Discrimination Procedural Safeguards

1. This Agreement recognizes that MDE has an affirmative obligation to not only eliminate discrimination in their organizational processes but to also proactively prevent discrimination, including any that may arise from the CPCN process.
2. Notice of Non-Discrimination: Within three (3) months of the signing of this Agreement, MDE will prominently post its Notice of Non-Discrimination on its website homepage, in general publications that are distributed to the public (e.g., public outreach materials such as brochures, notices, fact sheets, or other information on rights and services, as well as in applications or forms to participate in or access to MDE's programs, processes, or activities), and in MDE's offices.
3. Grievance Procedures: Within three (3) months of the signing of this Agreement, MDE will prominently publish in print and on-line its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and will do so on a continual basis to allow for appropriate, prompt, and impartial handling of those discrimination complaints, which may allow MDE to resolve issues at the lowest level possible.
4. Designation of Non-Discrimination Coordinator: Within three (3) months of the signing of this Agreement, MDE will designate a non-discrimination coordinator staff position. If necessary, this position can also conduct other duties. MDE will ensure that it has prominently published, in print and online, the identity of the current non-discrimination coordinator, along with his/her email address and telephone contact information.

5. Access for Persons with Limited English Proficiency (LEP): Within six (6) months of the signing of this Agreement, MDE will develop and implement a LEP Plan to ensure meaningful access for limited-English proficient individuals to MDE's programs and activities.
6. Access for Persons with Disabilities: Within six (6) months of the signing of this Agreement, MDE will develop and implement a policy and procedures for providing individuals with disabilities the opportunity for meaningful access and opportunity for full participation in MDE's programs and activities.

II. GENERAL

- A. In consideration of MDE's implementation of commitments and actions described in Section I of this Agreement, EPA will end its investigation of EPA Complaint Number 29R-16-R3 and not issue a decision containing findings on the merits of the Complaint.
- B. EPA will, upon request, provide technical assistance to MDE regarding any of the civil rights obligations previously referenced.
- C. EPA will review and, within 30 days provide feedback, which will include an assessment as to whether documentation submitted to EPA by MDE satisfies the particular commitment for which MDE is making the submittal, to MDE in response to any documentation submitted by MDE demonstrating completion of each commitment (*e.g.*, evidence of publication of the designation of the Non-Discrimination Coordinator).
- D. MDE will report the completion of each commitment identified under Subpart B, Section I consistent with the timeframes set forth in Subpart B, Section I by certified mail to Lilian Dorka, Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within thirty (30) days of the completion by MDE of each commitment.
- E. EPA will monitor the implementation of the commitments in this Agreement to ensure they are fully implemented. Once the terms of this Agreement are satisfied, EPA will issue a letter documenting closure of its monitoring actions in Complaint Number 29R-16-R3 and closure of the complaint as of the date of that letter.

III. COMPUTATION OF TIME AND NOTICE

- A. As used in this Agreement, "day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or holiday (State or Federal), the period shall run until the close of business of the next working day.
- B. Submission of any documents required by Section II. D. of this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
- C. Documents submitted by MDE to EPA shall be sent to Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.
- D. Documents submitted by EPA to MDE shall be sent to Ben Grumbles, Secretary, (or any successor) Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, MD 21230.

IV. EFFECT OF INFORMAL RESOLUTION AGREEMENT

- A. MDE understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, MDE understands that during the monitoring of this Agreement, if necessary, EPA may visit MDE, interview staff, and request such additional reports or data as necessary for EPA to determine whether MDE has fulfilled the terms of this Agreement and is in compliance with EPA regulations implementing the federal non-discrimination requirements in 40 C.F.R. Part 7.
- B. MDE understands that EPA will close its monitoring of this Agreement when EPA determines that MDE has fully implemented this Agreement and that a failure to satisfy any term in this Agreement may result in EPA re-opening the investigation.
- C. If either MDE or EPA desire to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to MDE's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written consent of the Secretary of MDE and the ECRCO Director of EPA.

- D. This Agreement constitutes the entire Agreement between MDE and EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this Agreement, except as specifically agreed to by MDE and EPA in accordance with the provisions of Subpart B, Section IV, Paragraph C above.
- E. This Agreement does not affect MDE's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulations at 40 C.F.R. Part 7, including § 7.85, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement. The Agreement does not affect MDE's right to respond to any such EPA investigation or any defenses to such.
- F. The effective date of this Agreement is the date by which both MDE and EPA have signed the Agreement. This Agreement may be signed in counterparts. The Secretary, in his capacity as an official of MDE, has the authority to enter into this Agreement for the purpose of carrying out MDE's commitments as set forth in this Agreement. The Director of ECRCO has the authority to enter into this Agreement.

On behalf of the Maryland Department of the Environment



Ben Grumbles
Secretary

1-21-19
(Date)

On behalf of the U.S. Environmental Protection Agency,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

9-27-2018
(Date)

Subpart C

INFORMAL RESOLUTION AGREEMENT
between the
MARYLAND DEPARTMENT OF NATURAL RESOURCES
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA Complaint Number 30R-16-R3

I. SPECIFIC COMMITMENTS FROM MDNR

A. Community Outreach and Public Participation

1. Within three (3) months of the signing of this agreement, MDNR shall adopt a policy or procedure that, upon receiving notice of a CPCN application for a Qualifying Generating Station, MDNR's Power Plant Research Program will identify a community resource officer who will serve as a point of contact for members of the public interested in the application. The community resource officer can participate at each CPCN Applicant community educational and outreach meeting associated with the application and may, but need not, be the project manager for the application at issue.

B. Non-Discrimination Procedural Safeguards

1. MDNR is committed to eliminate discrimination in its organizational processes and to proactively prevent discrimination, including any that may arise from its role in the CPCN process.
2. Notice of Non-Discrimination: Within three (3) months of the signing of this agreement, MDNR will prominently post its Notice of Non-Discrimination in its offices, on its website homepage, and, to the extent practicable, in general publications that are distributed to the public (e.g., public outreach materials such as brochures, notices, fact sheets, or other information on rights and services, as well as in applications or forms to participate in or access to MDNR's programs, processes, or activities).
3. Grievance Procedures: Within three (3) months of the signing of this agreement, MDNR will prominently publish in print and on-line its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and will do so on a continual basis to allow for appropriate, prompt, and impartial handling of those discrimination complaints, which may allow MDNR to resolve issues at the lowest level possible.
4. Designation of Non-Discrimination Coordinator: MDNR has designated and will maintain a designated non-discrimination coordinator. The employee holding this position may also have other job functions and duties. MDNR will ensure that it has prominently published, in print and online, the identity of the

current non-discrimination coordinator, along with his/her email address and telephone contact information.

5. Access for Persons with Limited English Proficiency (LEP): In January 2011, MDNR adopted an internal policy for Access for Persons with Limited English Proficiency. MDNR will review and update the LEP Plan to ensure it continues to provide meaningful access for limited-English proficient individuals to MDNR's programs and activities.
6. Access for Persons with Disabilities: MDNR maintains an ADA Transition Plan that is updated every 3 years. MDNR will implement the FY 19-21 ADA Transition Plan to ensure the Department is providing individuals with disabilities the opportunity for meaningful access and opportunity for full participation in MDNR's programs and activities.

II. GENERAL

- A. In consideration of MDNR's implementation of commitments and actions described in Section I of this Agreement, EPA will end its investigation of Complaint Number 30R-16-R3 and not issue a decision containing findings on the merits of the Complaint.
- B. EPA will, upon request, provide technical assistance to MDNR regarding any of the civil rights obligations previously referenced.
- C. EPA will review and provide feedback about any documentation submitted by MDNR demonstrating completion of each and will provide an assessment as to whether the documentation satisfies the commitment.
- D. MDNR will report the completion of each commitment identified under Section I consistent with the timeframes in Section I by certified mail to Lilian Dorka, Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within 30 days of the completion by MDNR of each commitment.
- E. MDNR has completed the implementation of commitments I.B.4, I.B.5, and I.B.6. EPA will monitor the implementation of the remaining commitments in this Agreement to ensure they are fully implemented. Once the terms of this Agreement are satisfied, EPA will issue a letter documenting closure of its monitoring actions in Complaint Number 30R-16-R3 and closure of the complaint as of the date of that letter.

III. COMPUTATION OF TIME AND NOTICE

- A. As used in this Agreement, "day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or holiday (State or Federal), the period shall run until the close of business of the next working day.
- B. Service of any documents required by this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
- C. Documents submitted by MDNR to EPA shall be sent to Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.
- D. Documents submitted by EPA to MDNR shall be sent to Mark Belton, Secretary, Maryland Department of Natural Resources, Tawes State Office Building, 580 Taylor Ave, Annapolis MD 21401.

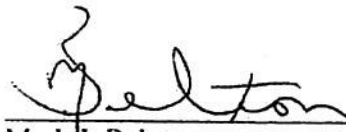
IV. EFFECT OF INFORMAL RESOLUTION AGREEMENT

- A. MDNR understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, MDNR understands that during the monitoring of this Agreement, if necessary, EPA may visit MDNR, interview staff, and request such additional reports or data as necessary for EPA to determine whether MDNR has fulfilled the terms of this Agreement and is in compliance with EPA regulations implementing the federal non-discrimination requirements in 40 C.F.R. Part 7, which were at issue in this case.
- B. MDNR understands that EPA will close its monitoring of this Agreement when EPA determines that MDNR has fully implemented this Agreement and that a failure to satisfy any term in this Agreement may result in EPA re-opening the investigation.
- C. If either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to MDNR's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement of the Secretary of MDNR and the ECRCO Director of EPA.
- D. This Agreement constitutes the entire Agreement between MDNR and EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any

commitment or term of this Agreement, except as specifically agreed to by MDNR and EPA in accordance with the provisions of Section IV. Paragraph c above.

- E. This Agreement does not affect MDNR's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulations at 40 C.F.R. Part 7, including § 7.85, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.
- F. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts. The Secretary, in his capacity as an official of MDNR, has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Director of ECRCO has the authority to enter into this Agreement.

On behalf of the Maryland Department of Natural Resources



Mark J. Belton,
Secretary

15 January 2019
(Date)

On behalf of the U.S. Environmental Protection Agency,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

9-24-2018
(Date)



**U.S. Department of
Transportation**

Pipeline and Hazardous
Materials Safety
Administration



**United States
Environmental Protection Agency**

External Civil Rights Compliance Office
Office of General Counsel

January 30, 2019

Return Receipt Requested

Certified Mail#: (b) (6) Privacy

In Reply Refer To:

DOT# 2016-0361
EPA File Nos. 28R-16-R3,
29R-16-R3, and 30R-16-R3

Jason M. Stanek, Chairman
William Donald Schaefer Tower
Maryland Public Service Commission
6 St. Paul Street, 16th Floor
Baltimore, MD 21202

Ben Grumbles
Secretary
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, MD 21230

Mark J. Belton
Secretary
Maryland Department of Natural Resources
580 Taylor Avenue
Annapolis, MD 21401

Dear Chairman Stanek, Secretary Grumbles, and Secretary Belton:

This letter is to inform you that the U.S. Department of Transportation (DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is resolving this complaint based on the enclosed Informal Resolution Agreement (Agreement) entered into between DOT and the Maryland Public Service Commission (PSC) and entered into between EPA and the Maryland Department of Environment (MDE) and the Maryland Department of Natural Resources (MDNR). On June 14, 2016, DOT and EPA accepted Complaint No. DOT #2016-0361 and EPA Complaint nos. 28R-16-R3, 29R-16-R3, and 30R-16-R3, which alleged violations of Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, including Title VI regulations administered by DOT (49 Code of Federal Regulations, Part 21) and EPA (40 Code of Federal Regulations, Parts 5 and 7), respectively. Specifically, the issues accepted for investigation were:

1. Whether the process and decision to issue a Certificate of Public Convenience and Necessity (CPCN) to Mattawoman Energy, LLC for the construction of a natural gas-fired power plant in Brandywine, Maryland discriminated on the basis of race, color, or national origin, in violation of Title VI; and

2. Whether the public engagement process prior to the decision to issue a CPCN discriminated on the basis of race, color, or national origin, in violation of Title VI.

During the course of DOT and EPA's investigation, PSC, MDE, and MDNR agreed to enter into an Informal Resolution Agreement in order to resolve this complaint. The enclosed Agreement is entered into by the PSC with the DOT and by MDE and MDNR with EPA pursuant to the authority granted to DOT and the EPA under the federal nondiscrimination laws, including Title VI of the Civil Rights Act of 1964, and DOT regulation found at 49 C.F.R., Part 21 and EPA regulation at 40 C.F.R. Parts 5 and 7, respectively. It resolves complaint numbers: DOT #2016-0361; and EPA Complaint nos. 28R-16-R3, 29R-16-R3, and 30R-16-R3 and additional concerns identified by DOT and EPA. It is understood that the Agreement does not constitute an admission by PSC or a finding by DOT of violations of 40 C.F.R., Part 21 or an admission by MDE and MDNR or a finding by EPA of violations of 40 C.F.R. Parts 5 and 7.

The enclosed Agreement does not affect PSC, MDE, and MDNR's continuing responsibility under Title VI or other federal non-discrimination laws, DOT's regulation at 40 C.F.R. Part 21, and EPA's regulation at 40 C.F.R. Parts 5 and 7, nor does it affect DOT and EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement. This letter sets forth PHMSA's and ECRCO's disposition of the complaint. This letter is not a formal statement of PHMSA's or ECRCO's policy and should not be relied upon, cited, or construed as such.

DOT is committed to working with PSC and EPA is committed to working with MDE and MDNR as you implement the provisions of the Agreement. PHMSA and ECRCO appreciate PSC, MDE, and MDNR's cooperation in this matter and your efforts to ensure that PSC, MDE, and MDNR have in place the appropriate foundational elements of a non-discrimination program and the policies and procedures to ensure meaningful access for persons with limited English proficiency and persons with disabilities. If you have any questions regarding the Agreement between PHMSA and PSC, please feel free to contact Rosanne Goodwill at (202) 366-6580, by e-mail at rosanne.goodwill@dot.gov, or U.S. mail at Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., (PH-20, E25-340), Washington D.C. 20590. If you have any questions regarding the Agreement between EPA and MDE or EPA and MDNR, please contact Lilian Dorka at (202) 564-9649, by e-mail at dorka.lilian@epa.gov, or U.S. mail at U.S. EPA, Office of General Counsel, External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,



Rosanne Goodwill, Director
Office of Civil Rights
Pipeline and Hazardous Materials
Safety Administration
U.S. Department of Transportation



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency

Enclosure

Cc:

Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office
U.S. EPA Office of General Counsel

Cecil Rodriques
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 3



**U.S. Department of
Transportation**

Pipeline and Hazardous
Materials Safety
Administration



**United States
Environmental Protection Agency**

External Civil Rights Compliance Office
Office of General Counsel

**INFORMAL RESOLUTION AGREEMENT BETWEEN THE U.S. DEPARTMENT OF
TRANSPORTATION PIPELINE AND HAZARDOUS MATERIALS SAFETY
ADMINISTRATION AND THE MARYLAND PUBLIC SERVICE COMMISSION; AND,
THE U.S. ENVIRONMENTAL PROTECTION AGENCY, AND THE MARYLAND
DEPARTMENT OF THE ENVIRONMENT, AND THE MARYLAND DEPARTMENT OF
NATURAL RESOURCES.**

The Informal Resolution Agreement between the U.S. Department of Transportation ("DOT") Pipeline and Hazardous Materials Safety Administration ("PHMSA") and the Maryland Public Service Commission ("PSC"), a recipient of PHMSA's federal financial assistance, and the U.S. Environmental Protection Agency ("EPA"), and the Maryland Department of the Environment ("MDE"), a recipient of EPA's federal financial assistance, and the U.S. Environmental Protection Agency and the Maryland Department of Natural Resources ("MDNR"), a recipient of EPA's federal financial assistance sets forth the terms of the mutual resolution of DOT/PHMSA's and EPA's investigation into the recipient agencies' permitting of the Mattawoman power plant in Brandywine, Maryland, pursuant to DOT's regulations at 49 C.F.R. Part 21 and EPA's regulations at 40 C.F.R. Part 7, implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 ("Title VI").

I. BACKGROUND AND PURPOSE

- A. Title VI and the federal agencies' implementing regulations prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. Each recipient agency is a recipient of federal financial assistance from DOT/PHMSA or EPA and is subject to the provisions of Title VI and either DOT's or EPA's implementing regulations.
- B. On June 14, 2016, DOT's Pipeline and Hazardous Materials Safety Administration Office of Civil Rights ("OCR"), with DOT's Departmental Office of Civil Rights ("DOCR"), jointly accepted a complaint with EPA's External Civil Rights Compliance Office ("ECRCO") that alleged discrimination based on race, color and national origin in violation of Title VI. In response to the complaint, DOCR/OCR and ECRCO began an investigation of the following issues:
 - (1) Whether the process and decision to issue a Certificate of Public Convenience and Necessity ("CPCN") to Mattawoman Energy, LLC, for the construction of a natural

gas-fired power plant in Brandywine, Maryland discriminated on the basis of race, color, or national origin, in violation of Title VI; and

- (2) Whether the public engagement process prior to the decision to issue a CPCN discriminated on the basis of race, color, or national origin, in violation of Title VI.
- C. During the course of the federal agencies' investigation, the recipient agencies agreed to enter into an Informal Resolution Agreement ("Agreement") in order to resolve this complaint.
- D. This Agreement is entered into voluntarily by the recipient agencies jointly, and by PHMSA's OCR and EPA's ECRCO.
- E. It is understood that this Agreement does not constitute an admission by the recipient agencies of a violation of, or a finding of compliance or noncompliance by PHMSA and/or EPA with, applicable federal non-discrimination laws and regulations.
- F. It is understood that PHMSA and EPA will cease investigation of DOT Complaint #2016-0361 and EPA complaints 28R-16-R3, 29R-16-R3, and 30R-16-R3 upon the signing of this Agreement and will provide technical assistance to support the recipient agencies in the implementation of the commitments contained herein.
- G. The PSC, MDE, and DNR agree to fully implement their specific responsibilities under the corresponding sections of this Agreement and the recipient agencies understand that a failure to satisfy any term in this agreement may result in the EPA and PHMSA re-opening an investigation.¹
- H. The recipient agencies are committed to carrying out their responsibilities in a nondiscriminatory manner, consistent with the requirements of Title VI and the other federal non-discrimination laws and regulations enforced by PHMSA and EPA. The activities detailed in this Agreement, which the recipient agencies have voluntarily agreed to undertake and implement, are in furtherance of this commitment.

II. APPLICABILITY

The federal agencies assert jurisdiction over this matter under their Title VI regulations. Title VI provides that "no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. §§ 2000d et seq.

The federal agencies represent that they have authority under their Title VI regulations to initiate an investigation in this matter to determine the recipient agencies'

¹ EPA Complaint Number 28R-16-R3 will close upon the signing of this Agreement, as PSC is not a recipient of EPA financial assistance.

compliance with Title VI, to issue findings, and where appropriate, to negotiate and secure voluntary compliance. 49 C.F.R. Part 21.11; 40 C.F.R. Part 7.120.

III. DEFINITIONS

- **Affected Communities** – refers to the residential individuals, organizations and other entities located within a one (1)-mile radius of the proposed facility fence line for an urban area, as defined by the United States Census Bureau, and within a three (3)-mile radius of the proposed facility fence line for a rural area, as defined by the Census Bureau.
- **Qualifying Generating Station** – refers to a proposed fossil fuel generation facility over 70 megawatts (MW) in nameplate capacity that is subject to the CPCN requirements under COMAR 20.79.01 et seq.

Subpart A

INFORMAL RESOLUTION AGREEMENT
between the
MARYLAND PUBLIC SERVICE COMMISSION,
and the
UNITED STATES DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
DOT Complaint Number 2016-0361

I. SPECIFIC COMMITMENTS FROM THE PSC

A. Community Outreach and Public Participation

1. PSC is committed to providing an opportunity for meaningful and full public participation by communities affected by a CPCN application consistent with Title VI and other applicable non-discrimination authorities. This includes providing meaningful access to persons with limited English proficiency ("LEP") and those with disabilities, as described in Section D. below.
2. CPCN Pre-Application Process. Within six (6) months of the signing of this agreement, PSC will submit to its formal rulemaking process a proposed rule that modifies the CPCN application requirements under Code of Maryland Regulations (COMAR) 20.79.01 to include and implement a pre-application process for Qualifying Generating Stations, which shall include the following requirements:
 - a. Notice to the Maryland Department of Natural Resources Power Plant Research Program ("PPRP"). The prospective applicant shall notify PPRP in writing of the applicant's intent to file a CPCN application to construct a Qualifying Generating Station and provide PPRP with information (e.g., type, source, location) on the proposed generating station no less than 90 days prior to the filing of the application.
 - b. Community Engagement. The prospective applicant shall meaningfully offer to engage the participation of the Affected Communities for the purpose of educating the Affected Communities concerning the project and soliciting their feedback. The prospective applicant shall at minimum:
 - i. Designate a Community Liaison Officer who will serve as the prospective applicant's point of contact for community inquiries about the application;
 - ii. Identify actual community members and community organizations within the Affected Communities (as the term is defined in Section III.) and provide notification of the project

and any public meeting invitation on the subject to the community members and organizations consistent with Section A(3) below;

- iii. Hold a minimum of one (1) public meeting within the county or municipal corporation in which any portion of the construction of the Qualifying Generating Station is proposed to be located, in accordance with the following requirements:
 - a. The public meeting must be scheduled at least 60 days before the filing of a CPCN application;
 - b. In addition to the notification requirements in Section A(3), the public meeting notice must be submitted to the governing body, and if applicable the executive, of each county or municipal corporation of the proposed location of the generating station; and
 - c. The prospective applicant must provide notification of the public meeting(s) by:
 - 1. Placing an invitation on the applicant's website, if any, or on the applicant's parent corporation's website;
 - 2. Placing an invitation on at least two types of social media platforms; and
 - 3. Publishing an advertisement in a newspaper of general circulation in the county or municipal corporation in which the proposed Qualifying Generating Station will be located.
 - iv. The prospective applicant shall prepare a Public Engagement and Participation Certification Form for New Applications, which shall describe the applicant's efforts to provide notice to and engage the Affected Community and shall include a summary discussion of what, if any, actions the applicant has agreed to take to address public concern(s) raised at the public meeting.
- c. Environmental Justice Screen.² The prospective applicant shall use the U.S. EPA EJSCREEN environmental justice screening tool to identify Affected Communities that may be subject to additional impacts from a

² See Purpose and Uses of EJSCREEN (<https://www.epa.gov/ejscreen/purpose-and-uses-ejscreen>), EJSCREEN Environmental Justice Mapping and Screening Tool EJSCREEN Technical Documentation August 2017 (https://www.epa.gov/sites/production/files/2017-09/documents/2017_ejscreen_technical_document.pdf).

proposed Qualifying Generating Station. The numerical thresholds for identifying sensitive areas susceptible to disparate, adverse impacts as a result of permitting certain industrial facilities shall be where the U.S. EPA EJSCREEN demographic index is at or more than the 80th percentile as compared to the state of Maryland for any single census block group within a three-mile circular buffer centered at the GIS coordinates of the proposed Qualifying Generating Station.³ The demographic index is the average of the percentage of the population that is minority and the percentage of the population that is low income, which is hereby defined as a household income less than or equal to twice, or 200 percent of, the federal "poverty level."

3. CPCN Notification Improvements. Within six (6) months of the signing of this agreement, PSC will submit to the formal rulemaking process a proposed modification to the rules governing notification of a filed CPCN application under COMAR 20.79.02 to include the following:
 - a. For fossil fuel generation facilities subject to the CPCN requirement, including those for which a waiver has been denied, the applicant shall post at minimum one large sign at the site of the proposed facility that is visible from the street(s), subject to applicable local restrictions and/or regulations.
 - b. For a Qualifying Generating Station, the applicant shall also send a letter by postal mail to all residential and business addresses within a one (1)-mile radius of the proposed facility site for an urban area, and within a three (3)-mile radius of the proposed facility site for a rural area. The letter notification shall include:
 - i. A fact sheet on the filed application, including the case number, the applicant's designated Community Liaison Officer (as described above) and other relevant information;
 - ii. The prehearing conference date;
 - iii. The deadline for filing petitions to intervene; and

³ See <https://www.epa.gov/ejscreen/frequent-questions-about-ejscreen#q5>. See https://www.epa.gov/sites/production/files/2017-09/documents/2017_ejscreen_technical_document.pdf, p. 26, for what a "percentile" means:

A percentile in EJSCREEN tells us roughly what percent of the US population lives in a block group that has a lower value (or in some cases, a tied value). This means that 100 minus the percentile tells us roughly what percent of the US population has a higher value. This is generally a reasonable interpretation because for most indicators there are not many exact ties between places and not many places with missing data. * * * All percentiles in EJSCREEN are population percentiles, meaning they describe the distribution of block group indicator scores across the population. Note that a population percentile may be slightly different than the unweighted percentile (the percent of block groups, not people, with lower or tied values), because not all block groups have the same population size. In practice they are very similar because very few block groups diverge very much from the average in population size.

- iv. A fact sheet concerning the CPCN process.
- c. The applicant shall file with the PSC at least one picture of each posted sign in accordance with Section A.3(a) and, where applicable, a signed certification of the notification mailings in accordance with subsection 3(b), along with a complete list of mailing recipient names and addresses.
- 4. If any formal rulemaking conducted pursuant to Paragraphs I.A.2. and I.A.3., above, results in any amendments to provisions of COMAR which are a part of the Maryland State Implementation Plan ("SIP"), the PSC will coordinate with MDE to ensure that such amended COMAR provisions are submitted to EPA for approval into the Maryland SIP.
- 5. The PSC will agree to review EPA's Public Participation Guidance found at 71 FR 14207, 14210 (March 21, 2006) which offers important information regarding successful public engagement. PHMSA will also provide appropriate technical assistance.

B. Organization

- 1. Within three (3) months of the signing of this agreement, PSC will provide a description of the CPCN process on its website and provide links to additional informational resources. PHMSA will review the description of the CPCN process on the website and provide any comments within 60 days.
- 2. Within six (6) months of the signing of this agreement, PSC shall also propose to modify COMAR 20.79.02 and 20.79.03 to require the applicant to include with its CPCN application:
 - a. The identity and contact information for the applicant's designated Community Liaison Officer, as described in Section A.2(b)(i);
 - b. If applicable, a copy of the applicant's U.S. EPA EJSCREEN report, which the applicant shall reference and address in the application;
 - c. If applicable, a completed and signed Public Engagement and Participation Certification Form. The Certification Form shall include any supporting documentation, including but not limited to any express terms of agreement reached between the applicant and the Affected Community (subject to redaction of any confidential information);
 - d. Any supporting documentation identifying zoning approvals by the local government/local environmental review board/district, where available.
- 3. Within three (3) months of the signing of this agreement, PSC will adopt a formal Title VI policy of nondiscrimination, and sign (See Section D. below)

and comply with its obligations under the Title VI assurances. PHMSA will review the formal Title VI policy of nondiscrimination within 60 days of receipt.

C. Training

1. Within one (1) year of the signing of this agreement, PSC will accept organization-wide training from PHMSA on compliance with Title VI and other non-discrimination authorities for its Commissioners, Public Utility Law Judges, Office of General Counsel, Office of Staff Counsel, Office of External Relations, Transportation Division, and all Division directors and assistant directors. Training should be provided within one year of the effectuation of this agreement. Within 30 days of completion of the training documentation will be submitted to PHMSA.
2. PSC will accept the provision of technical assistance from PHMSA on meaningful public engagement centered around the CPCN process. Training should be provided within one year of the effectuation of this agreement. Within 30 days of completion of the training documentation will be submitted to PHMSA.

D. Non-Discrimination Procedural Safeguards

1. This Agreement recognizes that the PSC is an independent agency that is committed to enforcing the open access and non-discrimination policies of the State of Maryland and as consistent with federal law.
2. Notice of Non-Discrimination. Within three (3) months of the signing of this agreement, PSC will prominently post a Notice of Non-Discrimination in its offices, on its website homepage, and, to the extent practicable, the PSC will include a Notice of Non-Discrimination in general publications that are distributed to the public (e.g., notice for public hearings, entrances to public hearings, public outreach materials such as brochures, notices, fact sheets, or other information on rights and services, as well as in applications or forms to participate in or access to PSC's programs, processes, or activities).
3. Grievance Procedures. Within three (3) months of the signing of this agreement, PSC will prominently publish on-line on its website homepage, and, to the extent practicable, in print, its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and will do so on a continual basis to allow for appropriate, prompt, and impartial handling of those discrimination complaints, which may allow PSC to resolve issues at the lowest level possible.
4. Designation of Non-Discrimination Coordinator. Within six (6) months of the signing of this agreement, PSC will designate a staff member to serve as its non-discrimination coordinator. It is understood that this individual may conduct other duties. PSC will ensure that it has prominently published, in print

and online, the identity of the current non-discrimination coordinator, along with their email address and telephone contact information.

5. Access for Persons with Limited English Proficiency (LEP). Within six (6) months of the signing of this agreement, PSC will develop and implement a LEP Plan to ensure meaningful access for limited-English proficient individuals to PSC's programs and activities.
6. Access for Persons with Disabilities. Within six (6) months of the signing of this agreement, PSC will develop and implement a policy and procedures for providing individuals with disabilities the opportunity for meaningful access and opportunity for full participation in PSC's programs and activities.

II. GENERAL

- A. In consideration of PSC's implementation of commitments and actions described in Section I of this agreement, PHMSA will end its investigation of DOT Complaint Number 2016-0361 and not issue a decision containing findings on the merits of the complaint.
- B. PHMSA will, upon request, provide technical assistance to PSC regarding any of the civil rights obligations previously referenced.
- C. PHMSA will review and provide feedback about any documentation submitted by PSC demonstrating completion of each commitment (e.g., evidence of publication of the designation of the Non-Discrimination Coordinator) and will provide an assessment as to whether the documentation satisfies the commitment.
- D. PSC will report the completion of each commitment identified under Section I consistent with the timeframes in Section I by certified mail to Rosanne Goodwill, Civil Rights Director, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave, SE, (PH-20, E25-340), Washington D.C. 20590, within 30 days of the completion by PSC of each commitment.
- E. PHMSA will monitor the implementation of the commitments in this agreement to ensure they are fully implemented. Once the terms of this agreement are satisfied, PHMSA will issue a letter documenting closure of its monitoring actions in DOT Complaint Number 2016-0361 and closure of the complaint as of the date of that letter.

III. COMPUTATION OF TIME AND NOTICE

- A. As used in this agreement, "day" shall mean a calendar day. In computing any period of time under this agreement, where the last day would fall on a Saturday, Sunday, or holiday (State or Federal), the period shall run until the close of business of the next working day.

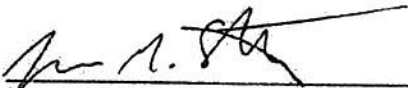
- B. Service of any documents required by this agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
- C. Documents submitted by PSC to PHMSA shall be sent to Civil Rights Director, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave, SE, (PH-20, E25-340), Washington D.C. 20590.
- D. Documents submitted by PHMSA to PSC shall be sent to Jason M. Stanek, Chairman, Maryland Public Service Commission, William Donald Schaefer Tower, 6 St. Paul St., 16th Floor, Baltimore, MD 21202.

IV. EFFECT OF INFORMAL RESOLUTION AGREEMENT

- A. PSC understands that by signing this agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further, PSC understands that during the monitoring of this agreement, if necessary, PHMSA may visit PSC, interview staff, and request such additional reports or data as necessary for PHMSA to determine whether PSC has fulfilled the terms of this agreement and is in compliance with DOT regulations implementing the federal non-discrimination requirements set forth in 49 C.F.R. Part 21, which were at issue in this case.
- B. PSC understands that PHMSA will close its monitoring of this agreement when PHMSA determines that PSC has fully implemented this agreement and that a failure to satisfy any term in this agreement may result in PHMSA re-opening the investigation.
- C. If either Party desires to modify any portion of this agreement because of changed conditions making performance impractical or impossible, or due to material change to PSC's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this agreement shall take effect only upon written agreement of the Chairman of PSC and the Civil Rights Director of PHMSA.
- D. This agreement constitutes the entire agreement between PSC and PHMSA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this agreement, except as specifically agreed to by PSC and PHMSA in accordance with the provisions of Section IV. Paragraph C. above.

- E. This agreement does not affect PSC's continuing responsibility to comply with Title VI or other federal non-discrimination laws and DOT's regulations at 49 C.F.R. Part 21, nor does it affect PHMSA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this agreement.
- F. The effective date of this agreement is the date by which both Parties have signed the agreement. This agreement may be signed in counterparts. The Chairman, in his capacity as an official of PSC, has the authority to enter into this agreement for purposes of carrying out the activities listed in these paragraphs. The PHMSA Civil Rights Director has the authority to enter into this agreement.

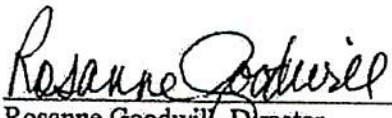
On behalf of the Maryland Public Service Commission



Jason M. Stanek
Chairman

1/28/19
(Date)


On behalf of the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration,



Rosanne Goodwill, Director
Civil Rights Office

9-27-18
(Date)

On behalf of the U.S. Department of Transportation, Departmental Office of Civil Rights,



Charles E. James, Sr., Director
Departmental Office of Civil Rights

9-27-2018
(Date)

Subpart B

INFORMAL RESOLUTION AGREEMENT
between the
MARYLAND DEPARTMENT OF THE ENVIRONMENT,
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA Complaint Number 29R-16-R3

I. SPECIFIC MDE COMMITMENTS

A. These commitments apply to a Qualifying Generating Station.

1. MDE will make air quality information publicly available as part of its review of a new CPCN application for any Qualifying Generating Station. The information will include:
 - A summary of the sampling data from MDE's air monitoring station(s) located closest to the site of a proposed electric generating unit.
 - A comparison between the sampling data and the applicable national ambient air quality standards (NAAQS) (40 C.F.R. Part 70).
 - A description of how MDE determines whether the proposed electric generating unit would not cause a violation of any NAAQS for which the State is in attainment and how the proposed project meets applicable Clean Air Act requirements in areas for which the State is not in attainment.
 - A description of any pollution control devices proposed to be installed and how they meet state or federal requirements with respect to controlling emissions of criteria air pollutants.
2. MDE will identify a community resource officer to participate at each CPCN Applicant community educational and outreach meeting associated with the receipt of a new CPCN application for a Qualifying Generating Station. At each community education and outreach meeting, MDE will:
 - provide a description of their regulatory authority;
 - provide a description of the required environmental assessments associated with the CPCN; and
 - provide a description of the environmental permitting requirements associated with the CPCN.
3. MDE's community resource officer will work with Affected Communities to evaluate any "citizen science" monitoring undertaken or proposed to be undertaken by communities or by others on the communities' behalf. MDE will provide a written response to the individual submissions which describe MDE's determinations regarding its information review.

4. In accordance with Subpart A, Paragraph I.A.4., MDE will submit to EPA for approval as an amendment to the Maryland State Implementation Plan any changes to COMAR which are the result of PSC formal rulemaking pursuant to Subpart A., Paragraphs I.A. 2 and I.A.3.

B. Training

1. MDE will accept the provision of organization-wide training from EPA on compliance with Title VI and other non-discrimination authorities. Training should be provided within one year of the effectuation of this agreement.
2. MDE will accept the provision of technical assistance from EPA on meaningful public engagement with regard to the CPCN process, including the creation of Public Engagement Plans (PEPs). Training should be provided within one year of the effectuation of this agreement.

C. Non-Discrimination Procedural Safeguards

1. This Agreement recognizes that MDE has an affirmative obligation to not only eliminate discrimination in their organizational processes but to also proactively prevent discrimination, including any that may arise from the CPCN process.
2. Notice of Non-Discrimination: Within three (3) months of the signing of this Agreement, MDE will prominently post its Notice of Non-Discrimination on its website homepage, in general publications that are distributed to the public (e.g., public outreach materials such as brochures, notices, fact sheets, or other information on rights and services, as well as in applications or forms to participate in or access to MDE's programs, processes, or activities), and in MDE's offices.
3. Grievance Procedures: Within three (3) months of the signing of this Agreement, MDE will prominently publish in print and on-line its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and will do so on a continual basis to allow for appropriate, prompt, and impartial handling of those discrimination complaints, which may allow MDE to resolve issues at the lowest level possible.
4. Designation of Non-Discrimination Coordinator: Within three (3) months of the signing of this Agreement, MDE will designate a non-discrimination coordinator staff position. If necessary, this position can also conduct other duties. MDE will ensure that it has prominently published, in print and online, the identity of the current non-discrimination coordinator, along with his/her email address and telephone contact information.

5. Access for Persons with Limited English Proficiency (LEP): Within six (6) months of the signing of this Agreement, MDE will develop and implement a LEP Plan to ensure meaningful access for limited-English proficient individuals to MDE's programs and activities.
6. Access for Persons with Disabilities: Within six (6) months of the signing of this Agreement, MDE will develop and implement a policy and procedures for providing individuals with disabilities the opportunity for meaningful access and opportunity for full participation in MDE's programs and activities.

II. GENERAL

- A. In consideration of MDE's implementation of commitments and actions described in Section I of this Agreement, EPA will end its investigation of EPA Complaint Number 29R-16-R3 and not issue a decision containing findings on the merits of the Complaint.
- B. EPA will, upon request, provide technical assistance to MDE regarding any of the civil rights obligations previously referenced.
- C. EPA will review and, within 30 days provide feedback, which will include an assessment as to whether documentation submitted to EPA by MDE satisfies the particular commitment for which MDE is making the submittal, to MDE in response to any documentation submitted by MDE demonstrating completion of each commitment (e.g., evidence of publication of the designation of the Non-Discrimination Coordinator).
- D. MDE will report the completion of each commitment identified under Subpart B, Section I consistent with the timeframes set forth in Subpart B, Section I by certified mail to Lilian Dorka, Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within thirty (30) days of the completion by MDE of each commitment.
- E. EPA will monitor the implementation of the commitments in this Agreement to ensure they are fully implemented. Once the terms of this Agreement are satisfied, EPA will issue a letter documenting closure of its monitoring actions in Complaint Number 29R-16-R3 and closure of the complaint as of the date of that letter.

III. COMPUTATION OF TIME AND NOTICE


- A. As used in this Agreement, "day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or holiday (State or Federal), the period shall run until the close of business of the next working day.
- B. Submission of any documents required by Section II. D. of this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
- C. Documents submitted by MDE to EPA shall be sent to Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.
- D. Documents submitted by EPA to MDE shall be sent to Ben Grumbles, Secretary, (or any successor) Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, MD 21230.

IV. EFFECT OF INFORMAL RESOLUTION AGREEMENT

- A. MDE understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, MDE understands that during the monitoring of this Agreement, if necessary, EPA may visit MDE, interview staff, and request such additional reports or data as necessary for EPA to determine whether MDE has fulfilled the terms of this Agreement and is in compliance with EPA regulations implementing the federal non-discrimination requirements in 40 C.F.R. Part 7.
- B. MDE understands that EPA will close its monitoring of this Agreement when EPA determines that MDE has fully implemented this Agreement and that a failure to satisfy any term in this Agreement may result in EPA re-opening the investigation.
- C. If either MDE or EPA desire to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to MDE's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written consent of the Secretary of MDE and the ECRCO Director of EPA.

- D. This Agreement constitutes the entire Agreement between MDE and EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this Agreement, except as specifically agreed to by MDE and EPA in accordance with the provisions of Subpart B, Section IV, Paragraph C above.
- E. This Agreement does not affect MDE's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulations at 40 C.F.R. Part 7, including § 7.85, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement. The Agreement does not affect MDE's right to respond to any such EPA investigation or any defenses to such.
- F. The effective date of this Agreement is the date by which both MDE and EPA have signed the Agreement. This Agreement may be signed in counterparts. The Secretary, in his capacity as an official of MDE, has the authority to enter into this Agreement for the purpose of carrying out MDE's commitments as set forth in this Agreement. The Director of ECRCO has the authority to enter into this Agreement.

On behalf of the Maryland Department of the Environment



Ben Grumbles
Secretary

1-21-19
(Date)

On behalf of the U.S. Environmental Protection Agency,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

9-27-2018
(Date)

Subpart C

INFORMAL RESOLUTION AGREEMENT
between the
MARYLAND DEPARTMENT OF NATURAL RESOURCES
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA Complaint Number 30R-16-R3

I. SPECIFIC COMMITMENTS FROM MDNR

A. Community Outreach and Public Participation

1. Within three (3) months of the signing of this agreement, MDNR shall adopt a policy or procedure that, upon receiving notice of a CPCN application for a Qualifying Generating Station, MDNR's Power Plant Research Program will identify a community resource officer who will serve as a point of contact for members of the public interested in the application. The community resource officer can participate at each CPCN Applicant community educational and outreach meeting associated with the application and may, but need not, be the project manager for the application at issue.

B. Non-Discrimination Procedural Safeguards

1. MDNR is committed to eliminate discrimination in its organizational processes and to proactively prevent discrimination, including any that may arise from its role in the CPCN process.
2. Notice of Non-Discrimination: Within three (3) months of the signing of this agreement, MDNR will prominently post its Notice of Non-Discrimination in its offices, on its website homepage, and, to the extent practicable, in general publications that are distributed to the public (e.g., public outreach materials such as brochures, notices, fact sheets, or other information on rights and services, as well as in applications or forms to participate in or access to MDNR's programs, processes, or activities).
3. Grievance Procedures: Within three (3) months of the signing of this agreement, MDNR will prominently publish in print and on-line its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and will do so on a continual basis to allow for appropriate, prompt, and impartial handling of those discrimination complaints, which may allow MDNR to resolve issues at the lowest level possible.
4. Designation of Non-Discrimination Coordinator: MDNR has designated and will maintain a designated non-discrimination coordinator. The employee holding this position may also have other job functions and duties. MDNR will ensure that it has prominently published, in print and online, the identity of the

current non-discrimination coordinator, along with his/her email address and telephone contact information.

5. Access for Persons with Limited English Proficiency (LEP): In January 2011, MDNR adopted an internal policy for Access for Persons with Limited English Proficiency. MDNR will review and update the LEP Plan to ensure it continues to provide meaningful access for limited-English proficient individuals to MDNR's programs and activities.
6. Access for Persons with Disabilities: MDNR maintains an ADA Transition Plan that is updated every 3 years. MDNR will implement the FY 19-21 ADA Transition Plan to ensure the Department is providing individuals with disabilities the opportunity for meaningful access and opportunity for full participation in MDNR's programs and activities.

II. GENERAL

- A. In consideration of MDNR's implementation of commitments and actions described in Section I of this Agreement, EPA will end its investigation of Complaint Number 30R-16-R3 and not issue a decision containing findings on the merits of the Complaint.
- B. EPA will, upon request, provide technical assistance to MDNR regarding any of the civil rights obligations previously referenced.
- C. EPA will review and provide feedback about any documentation submitted by MDNR demonstrating completion of each and will provide an assessment as to whether the documentation satisfies the commitment.
- D. MDNR will report the completion of each commitment identified under Section I consistent with the timeframes in Section I by certified mail to Lilian Dorka, Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within 30 days of the completion by MDNR of each commitment.
- E. MDNR has completed the implementation of commitments I.B.4, I.B.5, and I.B.6. EPA will monitor the implementation of the remaining commitments in this Agreement to ensure they are fully implemented. Once the terms of this Agreement are satisfied, EPA will issue a letter documenting closure of its monitoring actions in Complaint Number 30R-16-R3 and closure of the complaint as of the date of that letter.

III. COMPUTATION OF TIME AND NOTICE

- A. As used in this Agreement, "day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or holiday (State or Federal), the period shall run until the close of business of the next working day.
- B. Service of any documents required by this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
- C. Documents submitted by MDNR to EPA shall be sent to Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.
- D. Documents submitted by EPA to MDNR shall be sent to Mark Belton, Secretary, Maryland Department of Natural Resources, Tawes State Office Building, 580 Taylor Ave, Annapolis MD 21401.

IV. EFFECT OF INFORMAL RESOLUTION AGREEMENT

- A. MDNR understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, MDNR understands that during the monitoring of this Agreement, if necessary, EPA may visit MDNR, interview staff, and request such additional reports or data as necessary for EPA to determine whether MDNR has fulfilled the terms of this Agreement and is in compliance with EPA regulations implementing the federal non-discrimination requirements in 40 C.F.R. Part 7, which were at issue in this case.
- B. MDNR understands that EPA will close its monitoring of this Agreement when EPA determines that MDNR has fully implemented this Agreement and that a failure to satisfy any term in this Agreement may result in EPA re-opening the investigation.
- C. If either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to MDNR's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement of the Secretary of MDNR and the ECRCO Director of EPA.
- D. This Agreement constitutes the entire Agreement between MDNR and EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any

commitment or term of this Agreement, except as specifically agreed to by MDNR and EPA in accordance with the provisions of Section IV. Paragraph c above.

- E. This Agreement does not affect MDNR's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulations at 40 C.F.R. Part 7, including § 7.85, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.
- F. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts. The Secretary, in his capacity as an official of MDNR, has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Director of ECRCO has the authority to enter into this Agreement.

On behalf of the Maryland Department of Natural Resources



Mark J. Belton.
Secretary

15 January 2019
(Date)

On behalf of the U.S. Environmental Protection Agency,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

9-24-2018
(Date)



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460**

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

February 6, 2020

Return Receipt Requested

Certified Mail #: 7015 3010 0001 1267 2231

In Reply Refer to:

EPA Complaint No.: 30R-16-R3

Jeannie Haddaway-Riccio
Secretary
Maryland Department of Natural Resources
580 Taylor Avenue
Annapolis, MD 21401

Dear Secretary Haddaway-Riccio:

This letter is to notify you that the Maryland Department of Natural Resources (MDNR) has fully complied with the Informal Resolution Agreement (Agreement), dated January 30, 2019, reached between MDNR and the U.S. Environmental Protection Agency (EPA) External Civil Rights Compliance Office (ECRCO) in response to Complaint No. 30R-16-R3. Accordingly, Complaint No. 30R-16-R3 is closed as of the date of this letter.

On June 14, 2016, ECRCO accepted the following issue for investigation;

1. Whether the process and decision to issue a Certificate of Public Convenience and Necessity (CPCN) to Mattawoman Energy, LLC for the construction of a natural gas-fired power plant in Brandywine, Maryland discriminated on the basis of race, color, or national origin, in violation of Title VI; and
2. Whether the public engagement process prior to the decision to issue a CPCN discriminated on the basis of race, color, or national origin, in violation of Title VI.

On January 30, 2019, MDNR entered into an Informal Resolution Agreement (IRA) with ECRCO to resolve the issue accepted for investigation as well as additional concerns identified by ECRCO regarding MDNR's nondiscrimination program. Since the signing of the IRA, ECRCO provided significant technical assistance to MDNR and worked collaboratively with MDNR to support its development and implementation of the necessary policies, plans and procedures.

To address the primary issue accepted for investigation, the IRA required MDNR to adopt policy or procedure that, upon receiving notice of a CPCN application for a Qualifying Generating Station, MDNR's Power Plant Research Program will identify a community resource officer who will serve as a point of contact for members of the public interested in the application.

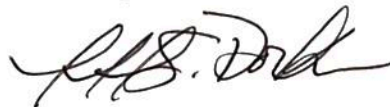
The IRA also required MDNR to develop and implement a nondiscrimination program that contains the procedural safeguards required by EPA's regulation at 40 C.F.R. Parts 5 and 7. These include, for example, items "prominently" posted and accessible to the public (including to persons with limited English proficiency (LEP) and persons with disabilities), such as a notice of nondiscrimination; a nondiscrimination coordinator; nondiscrimination grievance procedures; and to review and maintain its LEP and a disability policy and process.

Based on a careful review of the most current documentation submitted by MDNR and the information publicly available on MDNR's website, ECRCO has determined that MDNR has complied with the terms of the IRA entered into on January 30, 2019. MDNR made its submissions to ECRCO on May 13, 2019, June 17, 2019, and provided additional information and a request for formal closure of the informal resolution monitoring process in a letter dated January 16, 2020. Accordingly, ECRCO is terminating the monitoring of the IRA and closing EPA Complaint No. 30R-16-R3 as of the date of this letter.

Neither the conclusion of ECRCO's monitoring of this IRA or the closing of this complaint affect MDNR's continuing responsibility to comply with Title VI or the other federal non-discrimination laws and EPA's regulation at 40 C.F.R. Parts 5 and 7, nor does it affect EPA's investigation of any other Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.

If you have any questions, please feel free to contact me at 202-564-9649, by e-mail at dorka.lilian@epa.gov, or Dale Rhines, ECRCO's Deputy Director at 202-564-4174, by email at rhines.dale@epa.gov or U.S. mail at U.S. EPA, Office of General Counsel (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460.

Sincerely,



Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Diana Esher
Deputy Regional Administrator
Deputy Civil Rights Official
US EPA, Region 3

Cecil Rodrigues
Regional Counsel
US EPA, Region 3

From: [Lisa Anderson](#)
To: [Title VI Complaints](#)
Cc: [Lisa Anderson](#)
Subject: Title VI Complaint re: Puget Sound Clean Air Agency
Date: Friday, January 31, 2020 1:56:16 PM
Attachments: [SKM_C65820013013020.pdf](#)

Please see the attached Title VI Complaint re: Puget Sound Clean Air Agency from the Puyallup Tribe of Indians. A hard copy is also being sent via registered mail.

Sincerely,

Lisa A. Anderson



LAW OFFICE
of the
PUYALLUP INDIAN TRIBE



January 29, 2020

VIA CERTIFIED MAIL AND ELECTRONIC MAIL (Title_VI_Complaints@epa.gov)

U.S. EPA External Civil Rights Compliance Office (2310A)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

RE: Title VI Complaint re: Puget Sound Clean Air Agency

I. Identities of the Complainant and of the Entity Receiving Financial Assistance From the EPA

The complaining party is the **Puyallup Tribe of Indians** ("Tribe"), a federally recognized Indian Tribe with its Reservation located in the State of Washington. The entity receiving financial assistance from the U.S. Environmental Protection Agency ("USEPA") to which this complaint pertains is the **Puget Sound Clean Air Agency** ("PSCAA").

This Complaint concerns the manner in which PSCAA is carrying out its authority, delegated to it by the USEPA, with respect to a liquefied natural gas facility ("Tacoma LNG") being constructed in Tacoma, Washington, in a location that will impact the airshed the facility shares with the Tribe and its Reservation. Tacoma LNG is largely enveloped by the 1872 boundary of the Tribe's Reservation. A significant portion of the Tribe's population is located within the Reservation boundary, as are virtually all of the Tribe's cultural resources. Much of the Tribe's population is comprised of low-income individuals.

Upon information and belief, PSCAA is a recipient of EPA funding and oversight with regard to its implementation of the Clean Air Act. Accordingly, the programs and activities of PSCAA, including its issuance of orders and permits for the Tacoma LNG facility under the Clean Air Act are subject to the requirements of Title VI of the Civil Rights Act and EPA's implementing regulations (including 40 C.F.R. 7.35).

II. Summary of Conduct Necessitating this Complaint

Despite the fact that the Puyallup Tribe and other low-income and minority populations in the immediate vicinity of the Tacoma LNG facility already bear a disproportionately high level of pollution, including air pollution (industrial and otherwise), the project proponent, Puget Sound Energy (“PSE”) has sought government authorization to construct a liquefied natural gas facility that includes a 8-million gallon tank for storing explosive materials, vaporizers and flares on over thirty (30) acres of land located on the Reservation’s border.

On December 10, 2019, PSCAA issued a Final Order of Approval – the air permit for Tacoma LNG. The permitting documents and records indicate that PSCAA did not analyze the facility’s disparate impacts, nor did PSCAA assess the risks the Facility poses to health and safety (to ascertain whether Facility’s impacts will be sufficiently benign to protect human health and safety from carcinogenic and other toxic effects).¹ This is notable because, as discussed above, the facility will emit a significant quantity of hazardous and toxic air pollutants into an airshed that the facility shares with the Tribe, residential neighborhoods consisting of minority and low-income populations, and the adjacent Northwest Detention Center. Both individually, and cumulatively, emissions of these pollutants pose significant health risks to the public that the Final Environmental Impact Statement (“FEIS”) for the project failed to consider or disclose.² Indeed, the FEIS contains no explanation of how toxic air emissions would affect residents that live near to the project. FEIS at 3.2-9 to 3.2-12.³

The FEIS also fails to discuss cumulative air toxic impacts from industrial activities adjacent to the Tacoma LNG project. FEIS at 3.13-5, 3.13-6. The proposed location of the Tacoma LNG facility is surrounded by facilities that emit air pollution. The zip code for Tacoma LNG includes nine (9) major sources of air pollutants, and seven (7) minor sources. The FEIS acknowledges that the facility is next to two oil refineries, a paper mill, and other industrial facilities. FEIS at 3.2-6. However, it never analyzes the cumulative effects on human health of air pollutant emissions from these facilities, in addition to the current project.

¹ On December 9, 2019, the U.S. Environmental Protection Agency’s External Civil Rights Compliance Office (ECRCO) rejected a Complaint filed by the Tribe regarding these issues (EPA Complaint No. 01NO-20-R10) because PSCAA had “not issued a final order of approval” and thus “[t]he complaint allegation is not ripe for review because it anticipates future events which may not unfold as outlined in the complaint.” ECRCO Rejection of Administrative Complaint No. 01NO-20-R10, at p. 2.

² The Final EIS can be accessed at:
[https://cms.cityoftacoma.org/planning/pse/Reissued%20Final%20Tacoma%20LNG%20EIS%20\(11-9-15\).pdf](https://cms.cityoftacoma.org/planning/pse/Reissued%20Final%20Tacoma%20LNG%20EIS%20(11-9-15).pdf).

³ Moreover, PSCAA’s Order of Approval was not supported by a supplemental environmental impact statement, even though the project has changed significantly in a way that would result in new adverse environmental impacts. For example, the revised project contemplates much higher rates of marine fueling for which there is no infrastructure and no permits, which would result in significant impacts in the marine waters adjacent the project, and which create enhanced safety issues in and around the Blair Waterway. These impacts have never been examined.

III. Environmental Justice Background

The purpose of Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” is to prevent or reduce the disproportionately high pollution burden on racial minority and low-income populations. The EPA additionally developed the “Environmental Justice Implementation Plan,” which sets out a strategy for integrating environmental justice in regulatory review of permits and other activities pursued through compliance assurance and enforcement. EPA, Environmental Justice Implementation Plan, EPA/300-R-96-004, April 1996. In the context of EPA’s regulatory function, the goal of the Environmental Justice Implementation Plan is to,

Ensure that EPA’s enforcement and compliance assurance activities include a focus on minority communities and low-income communities which suffer from disproportionately high and adverse human health and environmental effects.

Id. at 16.

It is notable that prior to EO 12898, the EPA published “Environmental Equity: Reducing Risk for All Communities,” which explained how provisions of the 1990 Clean Air Act Amendments, in addition to other environmental statutes, served as tools for protecting racial minority and low-income communities that were “surrounded by multiple sources of air pollution” and other serious environmental health risks. EPA, Environmental Equity: Reducing Risk for All Communities, EPA230-R-92-008A, Volume 2, June 1992, p. 1. The report was based on health studies that identified racial minority and low-income individuals as being sensitive to the adverse health effects of air pollution and several demographic analyses on the concentration of air pollutants in predominantly racial minority and poor communities. *Id.* at 21. The report identifies and analyzes key environmental laws that govern permit issuance and enforcement as a means to target environmental protection on “problems [that] pose the greatest risks nationwide to human health and the environment.” *Id.* at 1.

Pursuant to this environmental protection strategy, EPA set a priority for protecting racial minority and low-income communities that are disproportionately burdened with the adverse environmental and health effects of pollution.

IV. Information Specific to the Tacoma Tideflats and the Environmental Burdens Faced by Tribe

Clearly, the EPA acknowledges the vital necessity of protecting communities like the Reservation as part of its mission to ensure environmental protection for all people by focusing on those who are the most vulnerable to pollution. As a recipient of EPA financial assistance, the programs and activities of PSCAA, including its issuance of the NOC and operating permits for the Tacoma LNG facility under the Clean Air Act, are subject to the requirements of Title VI of the Civil Rights Act and EPA's implementing regulations (including 40 CFR 7.35).

Environmental health disparity tools, including EPA's EJSCREEN⁴ and the Washington State Department of Health's Environmental Health Disparities Map⁵, indicate the population situated near Tacoma LNG – including the Puyallup Tribe – suffer disproportionately high environmental burdens. Additionally, environmental justice materials developed by PSCAA itself indicate the Puyallup Tribe's members living on its reservation breathe among the highest levels of air pollution in its jurisdiction.⁶

V. The Tacoma LNG Facility constitutes an additional source of toxic air pollution to an area that already bears a disproportionately high level of pollution

Tacoma LNG's permit application itself establishes that a host of Toxic Air Pollutants (TAPs) and Hazardous Air Pollutants (HAPs) that will be emitted from the facility, including the following pollutants that will be emitted above *de minimis* levels: **7,12-Dimethylbenz(a)anthracene⁷; Benzene⁸; Formaldehyde⁹; Hydrogen sulfide¹⁰; Arsenic¹¹; Beryllium¹²; Cadmium¹³; Manganese¹⁴; Vanadium¹⁵; Carbon monoxide¹⁶; Nitrogen dioxide¹⁷; Sulfur dioxide¹⁸**. These chemicals are of great concern because of their known or suspected toxic effects on humans. For example, the facility's aforementioned flare would emit large quantities of hazardous air pollutants, including benzene, toluene, and xylene. Benzene causes blood disorders, and chronic exposure can cause leukemia.¹⁹ Toluene can cause respiratory illness and is a developmental

⁴ <https://ejscreen.epa.gov/mapper/>

⁵ <https://www.doh.wa.gov/DataandStatisticalReports/EnvironmentalHealth/WashingtonTrackingNetworkWTN/InformationbyLocation/WashingtonEnvironmentalHealthDisparitiesMap>

⁶ See <https://www.pscleanair.org/DocumentCenter/View/3207/HI-C-Report---Final?bidId=> (at pg. 19, Figure 10)

⁷ CAS No. 57976; listed as a TAP at WAC 173-460-150.

⁸ CAS No. 71432; listed as a HAP at 42 U.S.C. 7412.

⁹ CAS No. 500000; listed as a HAP at 42 U.S.C. 7412.

¹⁰ Potentially a HAP. See 42 U.S.C. 7412(n)(5). Identified as a TAP at WAC 173-460-150.

¹¹ Identified as a HAP at 7412(b)(1).

¹² Identified as a HAP in table at 7412(b)(1).

¹³ Identified as a HAP in table at 7412(b)(1).

¹⁴ Identified as a HAP in table at 7412(b)(1).

¹⁵ Identified as a TAP at WAC 173-460-150.

¹⁶ CAS No. 630080; identified as a TAP at WAC 173-460-150.

¹⁷ CAS No. 10102440; identified as a TAP at WAC 173-460-150.

¹⁸ CAS No. 74460905; identified as a TAP at WAC 173-460-150.

¹⁹ U.S. Env'tl. Prot. Agency, "Benzene," <https://www.epa.gov/sites/production/files/2016-09/documents/benzene.pdf>

toxicant.²⁰ Xylene can cause developmental effects such as delayed bone development in fetuses, and chronic exposure can cause neurological effects.²¹ But the issues are by no means limited to three chemicals; many of the others listed above are carcinogenic, some are mutagenic or teratogenic, and most can have toxic effects on the respiratory system, the skin, and other vital organs.²²

In short, there can be no serious dispute that the Tacoma LNG facility will represent an increase in a number of pollutants to Washington's air. Yet these contaminants will not be spread out throughout the state; they will be confined to the area near the Tacoma LNG facility, including the Puyallup Tribe's Reservation. And significantly, many of the chemicals the Tacoma LNG facility will emit into the Tribe's airshed are persistent and bioaccumulative and, therefore, would remain in the environment for generations and accumulate through the food chain. This poses a danger to tribal food sources and cultural practices.

Ultimately, PSCAA's Order of Approval for Tacoma LNG allows for the addition of too much additional air pollution to an area that bears a disproportionately high level of industrial pollution from existing facilities.²³ In other words, the granting of this permit, for this facility in this location, constitutes an instance of disparate impact discrimination. This fact was recently recognized by the Tacoma Human Rights Commission (THRC) in a letter seeking a Supplemental Environmental Impact Statement focusing on "the potential environmental hazards and human-rights injustices to vulnerable, frequently marginalized populations in and near the [Tacoma] Tidelands area."²⁴

²⁰ U.S. Env'tl. Prot. Agency, "Toluene," <https://www.epa.gov/sites/production/files/2016-09/documents/toluene.pdf>

²¹ U.S. Env'tl. Prot. Agency, "Xylenes (Mixed Isomers)," <https://www.epa.gov/sites/production/files/2016-09/documents/xylenes.pdf>

²² Indeed, the toxic chemicals that PSE plans to release have been termed "hazardous air pollutants" by Congress, 42 U.S.C. § 7412(b)(1), and have been determined by peer-reviewed scientific studies to be carcinogenic and otherwise damaging to humans.

²³ Additionally, as to safety, the Washington State Department of Health's Environmental Health Disparities Map's "Proximity to Risk Management Plan Facilities" tool indicates the Tribe's reservation is already disproportionately exposed to environmental risks. In fact, the geographic area making up the Tribe's Reservation ranks at the top of the tool's exposure risk scale (10 out of 10). See <https://fortress.wa.gov/doh/wtn/WTNIBL/>.

²⁴ The THRC is an arm of the City of Tacoma created to "study and investigate problems of prejudice, bigotry, and discrimination and to encourage and coordinate the implementation of programs consistent with the needs and the rights of all residents of the City of Tacoma." See, https://www.cityoftacoma.org/government/committees_boards_commissions/human_rights_commission/

VI. PSCAA Has Refused to Consult with the Tribe

As a final matter, PSCAA has, to date, refused to engage in government-to-government consultation with the Tribe regarding (*inter alia*) the issues and concerns outlined in this Complaint. PSCAA's unwillingness to consult not only violates the Tribe's and its members' rights under the Treaty of Medicine Creek, but also ignores the agency's legal obligation to exercise its delegated authority in a manner consistent with applicable State and Federal law.

VII. Conclusion

PSCAA's failure to look at the Environmental Justice implications of the permitting decision before it necessitates this Complaint and request for USEPA intervention. PSCAA should be required to perform a thorough analysis of Tacoma LNG's disparate impacts before the facility is permitted to be constructed and operating. Additionally, PSCAA should be required to engage in meaningful consultation with the Tribe.

Please contact Lisa Anderson, of the Law Office, with any questions or concerns regarding this matter at (253) 573-7852.

Sincerely,



Lisa A. H. Anderson
Environmental Attorney



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

February 5, 2020

Return Receipt Requested

Certified Mail #: 7015 3010 0001 1267 2217

In Reply Refer to:

EPA Complaint No. 02NO-20-R10

Ms. Lisa A. H. Anderson
Puyallup Tribe of Indians
3009 East Portland Avenue
Tacoma, WA 98404

Re: Acknowledgement of Administrative Complaint

Dear Ms. Anderson:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), received your correspondence on January 31, 2020, alleging discrimination based on national origin (Puyallup Tribe) in violation of Title VI of the Civil Rights Act of 1964 involving the Puget Sound Clean Air Agency.

ECRCO is responsible for processing and resolving complaints alleging discrimination by programs or activities that receive financial assistance from the EPA. ECRCO will review the correspondence in light of EPA's nondiscrimination regulation to determine whether it is a complaint that falls within ECRCO's jurisdiction. Once this jurisdictional review is completed, ECRCO will notify you as to whether it will accept the complaint for investigation, or reject, or refer the complaint to another Federal agency.

In the interim, if you have any questions about the status of this correspondence, please contact me by telephone at (202) 564-4174 or by email at rhines.dale@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale Rhines", is positioned above the typed name and title.

Dale Rhines
Deputy Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Michelle Pirzadeh
Deputy Regional Administrator
Deputy Civil Rights Official
US EPA Region 10

Allyn Stern
Regional Counsel
US EPA Region 10

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

February 3, 2020

Return Receipt Requested

Certified Mail #: 7015 3010 0001 1267 2224

In Reply Refer to:

EPA Complaint No. 02NO-20-R10

Craig T. Kenworthy
Executive Director
Puget Sound Clean Air Agency
1904 Third Avenue, Suite 105
Seattle, WA 98101

Re: Acknowledgement of Administrative Complaint

Dear Director Kenworthy:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), received correspondence on January 31, 2020, alleging discrimination based on national origin in violation of Title VI of the Civil Rights Act of 1964 involving the Puget Sound Clean Air Agency.

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Sincerely,

A handwritten signature in black ink, appearing to read "Dale Rhines".

Dale Rhines
Deputy Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Michelle Pirzadeh
Deputy Regional Administrator
Deputy Civil Rights Official
US EPA Region 10

Allyn Stern
Regional Counsel
US EPA Region 10



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

February 25, 2020

Return Receipt Requested

Certified Mail #: 70153010000112673207

In Reply Refer to:

EPA Complaint No. 02NO-20-R10

Ms. Lisa A. H. Anderson
Puyallup Tribe of Indians
3009 East Portland Avenue
Tacoma, WA 98404

Re: Rejection of Administrative Complaint

Dear Ms. Anderson:

On January 31, 2020, the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), received your administrative complaint filed against the Puget Sound Clean Air Agency (PSCAA). The complaint alleges that PSCAA discriminated against the Puyallup Tribe of Indians ("Tribe"), on the basis of race/national origin, in violation of Title VI of the Civil Rights Act of 1964 and EPA's nondiscrimination regulation, 40 C.F.R. Part 7. Specifically, the complaint alleges PSCAA discriminated when, on December 10, 2019, PSCAA issued a Final Order of Approval for an air permit for Tacoma Liquified Natural Gas (Tacoma LNG) that adversely impacts Tribal residents. For the reasons identified below, ECRCO is rejecting this complaint without prejudice and closing this case as of the date of this letter.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine jurisdiction and/or the appropriate referral to another Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

In general, ECRCO will accept, reject, or refer a complaint after considering the jurisdictional requirements described above. However, if ECRCO obtains information leading ECRCO to conclude that an investigation is unjustified for prudential reasons, ECRCO may reject a complaint allegation. For example, ECRCO may reject a complaint allegation if the same complaint allegation has been filed or is currently pending with another Federal, State or local

agency, and it is anticipated that the agency will provide the complainant with a comparable resolution process.¹

The complaint concerns PSCAA's issuance of Order of Approval for Notice of Construction No. 11386 ("the Permit"). ECRCO met with you in person on February 20, 2020, to discuss the complaint in further detail and was informed that the Tribe and other parties filed an appeal of the subject permit with the State of Washington Environmental and Land Use Hearings Office's Pollution Control Hearings Board (PCHB). The Tribe's appeal contends that "PSCAA's action wholly failed to account for the fact that impacts from the construction and operation of the Project will impact tribal members, minority and low-income populations by causing disproportionately high and adverse effects."² Additionally, the Tribe filed a motion to stay the issuance of the Permit pending the resolution of the appeal.³ Although the PCHB will not be making a determination with respect to alleged violations of Title VI, the factual and environmental issues and harms alleged in the appeal and motion to stay are substantially similar and material to those raised in the complaint filed with ECRCO.⁴

The appeal has been scheduled for a pre-hearing conference on March 1, 2021, at which the Tribe will submit a list of proposed legal issues including possible witnesses and exhibits. The appeal process affords the Tribe, PSCAA, and other interested parties the opportunity to develop a full evidentiary record by conducting formal discovery, presenting oral arguments, and examining witnesses.⁵ The PCHB will issue a written decision either denying the appeal or remanding the permit to PSCAA for further processing. The PCHB's decision may be appealed to State of Washington superior court.

In light of this information, ECRCO has determined that an investigation is premature at this time because the Permit may change or be remanded as a result of the appeals process. Accordingly, ECRCO is rejecting this complaint without prejudice. As stated in the Case Resolution Manual, a complaint may be re-filed with ECRCO within 30 days of the completion of the PCHB's appeal proceeding.⁶ If the complaint is re-filed, ECRCO will then proceed with its preliminary review to determine acceptance, rejection, or referral.

If you have questions about this letter, please feel free to contact me at (202)564-9649, by email

¹ See Case Resolution Manual, *available at* https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf

² The Puyallup Tribe of Indians' Notice of Appeal of Puget Sound Clean Air Agency's Order on NOC Application No. 11386 (December 19, 2019).

³ ECRCO reviewed the motion to stay which states that (1) the Permit erroneously fails to require that PSE comply with emission and monitoring requirements applicable to the LNG facility's emergency generators set forth at 40 C.F.R. Subparts IIII and ZZZZ; (2) the Permit erroneously fails to require PSE to comply with the requirements at 40 C.F.R. Subpart OOOOa to monitor and control fugitive Greenhouse Gas (GHG) and Volatile Organic Compound (VOC) emissions; and (3) the Permit erroneously fails to require PSE to submit a Risk Management Plan and other Hazard Management Plans as required under 40 C.F.R. Part 68. The PCBH has not yet issued a decision on the Tribe's motion.

⁴ The motion to stay contains paragraphs identical to the portion of the complaint describing harm arising from the Permit.

⁵ See PCHB Rules of Procedure, Ch. 371-08 WAC, *available at* <https://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>

⁶ See fn 1.

at dorka.lilian@epa.gov, or Brittany Robinson, Case Manager, at (202) 564-0727, by email at robinson.brittany@epa.gov, or by mail at U.S. EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460-1000.

Sincerely,



Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Michelle Pirzadeh
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 10

Lisa Castanon
Acting Regional Counsel
U.S. EPA Region 10



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

February 25, 2020

Return Receipt Requested

Certified Mail #: 70153010000112672927

In Reply Refer to:

EPA Complaint No. 02NO-20-R10

Craig T. Kenworthy
Executive Director
Puget Sound Clean Air Agency
1904 Third Avenue, Suite 105
Seattle, WA 98101

Re: Rejection of Administrative Complaint

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Sincerely,



Lilian S. Dorka
Director
External Civil Rights Compliance Office
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cc: Angelia Talbert-Duarte
Acting Associate General Counsel
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Michelle Pirzadeh
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U.S. EPA Region 10

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U.S. EPA Region 10

⁶ See fn 1.